
AN
ESSAY
ON THE
CONSTITUTION OF ENGLAND.

510
28
—
29

A N
E S S A Y
ON THE
CONSTITUTION OF ENGLAND.

WITH AN
APPENDIX.

Omnia orta occidunt, et aucta senescunt.

SALUST.

THE THIRD EDITION:

LONDON:

PRINTED FOR T. BECKET, PALL-MALL, BOOK-
SELLER TO THEIR ROYAL HIGHNESSES
THE PRINCE OF WALES,
DUKES OF YORK AND CLARENCE,
AND THE JUNIOR PRINCES.

1793.

Pa 203792.400

Harvard College Library
21 Oct 1939
Deposited by Bus. Sch. Lib.

ADVERTISEMENT.

IT seldom happens, that the reputation of a Pamphlet survives the particular occasion which suggested it. The following tract was first published in 1765, and went through two editions. After an interval of near twenty-eight years, and when all the copies of the two former editions had been long sold off, it has been called for with a degree of earnestness which seldom attends the appearance of even a new work. The publisher has, therefore, thought it his duty to yield to the numerous applications that have been made to him to give a third edition

2 tion

tion of it, and from the interesting nature of the subject, and the high character of the reputed AUTHOR, he conceives that in re-printing it at the present time, he is rendering a seasonable and essential service to the Public.

August, 1793.

P R E F A C E.

THERE is nothing more universal than the partial regard which each nation has for its own antiquities. Horace, who lived in the most refined age of Rome, says, that his cotemporary Romans were so extravagantly prepossessed in favour of the works of their rude ancestors, as to endeavour to persuade one another that the Decemviral laws, and the treaties made by their ancient kings with the neighbouring villages, were of such elegant composition that nothing less than the immediate inspiration of the Muses could have produced them.

When such vulgar prejudices happened to be useful, or, at least, innocent, it would be time ill bestowed to lay open the slightness of their foundation: but when, as Horace complains, they are displayed in order to form injurious comparisons, and to deprive living merit of its due praise and reward, it be-

b

comes

comes the business of every honest man to expose their falsehood and absurdity.

A motive of this sort set me first upon writing the following sheets. I had frequently heard the ancient constitution of England cried up as a model of perfection : I had frequently heard that the possession of liberty was inseparable from the inhabitants of Britain : I had frequently heard that Magna Charta was the completion and fixed standard of this liberty ; and that it shone with unparalleled lustre under the Henrys, Edwards, and Elizabeth. All this might be heard without uneasiness ; but when I discovered that those prejudices had been industriously propagated amongst the unlearned, in order to depreciate the liberty we now enjoy under the best of Kings, at the head of a free parliament, I must own I felt some indignation at the attempt ; and thought I could not better perform the part of a faithful subject and good citizen, than by endeavouring to point out, to the well meaning part of my countrymen, how unjust those comparisons were, and how extremely

tremely groundless the discontents they had conceived in consequence of them.

To prevent people from yawning over a political treatise, whose purpose was not in the least to abuse or defend any set of great men, there was a necessity for making it short; and this I endeavoured, by admitting nothing into it but allusions to facts, either such as are notorious, or such as are to be found in every English historian, who chuses to deal in facts rather than invectives. But I am now very sensible that, however advantageous this short-hand manner of writing may be in some respects, it is in others very defective. It is not every reader who is able, or perhaps willing, to connect facts in such a manner as to produce those arguments from them which the author expected; and his meaning may be, by this means, often mistaken and often misrepresented. To remedy, therefore, this imbecility in my poor Essay, and to declare for it what it means to say, is the chief purpose of this supplemental Preface.

It means, then, to trace the actual progress of English liberty, from its lowest ebb to that glorious height to which it has arrived; to shew that this increase was constant and gradual, not arising from any providential laws or contrivances of men; but from a certain tide of things which flowed, not only against the means that were contrived to prevent it, but sometimes flowed the faster by those very means. To shew that Magna Charta was not the cause, but the consequence of a degree of liberty, and that what was liberty then would be no better than slavery now.

It means to put us in mind that *liberty* is only another word for *power*; that *the extension of political liberty* can signify nothing else but the extension of the circle of government and of its constituents; and that every extension of this circle must be deemed a change in the constitution, either for the better or the worse.

It means to say, that every such extension of power or security to the people, without a proportionate addition of power to their rulers, must be ever dangerous to the state, and
that

that the want of a due attention to this circumstance has been the cause of all the difficulties which have happened in the management of public affairs, and of almost all the civil wars with which England has been visited.

It means to say, in some future edition, that the freedom of the subject in England is now arrived at the highest degree of perfection consistent with the nature of civil government; and that it is the duty of every good Englishman to cry, with a late ingenious author, ESTO PERPETVA, without adding any contradiction to this pious wish, by wishing for any innovation on pretence of improving it.

It means to shew that the notion of producing what has been called *a more complete representation of the people*, by admitting the lower classes of them into a share of the legislation, is only a scholastic dream; and that the circle of government cannot, in fact, be extended beyond a certain point, without depriving the rulers of those powers, by which

alone they can provide for the public order and safety.

It means to apply these observations to the present situation of things in this country, by hinting, that although it should be ever so demonstrable that republics have their mortal period as well as men, yet it is our duty, in the one case as well as the other, to retard the evil day as long as possible, and not to hasten it by our folly or intemperance : And it means in a particular manner to lament the unhappy conduct of those leading men, either in or out of place, who, to promote their own particular interests, court the approbation and assistance of the populace ; and by so doing acknowledge in them a right, unacknowledged by the laws of the land, of controuling and dictating to government ; which, were it ever to be thoroughly established, would put an end to all stability, all confidence, all force in administration ; and with them, all quiet at home and all safety abroad : a dreadful distemper, which never was cured in any state but by what we ought to look upon as a most dreadful

ful remedy, that is, by embodying a certain number of those *so acknowledged constituents of government*, who, having nothing to furnish in its support but their arms and legs, have been in all ages, easily induced to employ those arms and legs in procuring quiet from the rest, and who have never failed, upon such occasions, to practise most faithfully that levelling doctrine, which the spirit of faction had so eloquently preached to them, by reducing all the rest of their countrymen, noble and mean, rich and poor, learned and ignorant, into one undistinguished mass of slavery.

The short description I have given of Magna Charta will not, I believe, be satisfactory to many of my readers. It is, indeed, only meant to awaken a curiosity which the conciseness of my plan does not permit me to gratify. It was my meaning, that those who were desirous of knowing with certainty to what degree these assertions were true or false, should examine the record itself, together with whatever else is necessary for its explanation. But having reflected that many persons of worth, to whom I should be desirous

firous to recommend my writings, had not the time, the means, or, perhaps, the industry to obtain this satisfaction; I thought it proper, upon this occasion, to throw in a few observations of my own for their assistance.

Of the sixty-three articles, or clauses, of which this famous charter is composed, about twenty-six are employed in regulating the several parts of the feudal servitude then by law established; all which articles, together with the servitude itself, were laid aside by an act of the legislature, about a hundred years ago. And it may be here proper to remark, for the benefit of those who are fond of this antient constitution, that although the course of above 400 years had pared its claws to the very stumps, yet were what remained so troublesome, that our forefathers were glad to subject themselves to a perpetual excise in order to be entirely freed from them.

Of about twenty-eight more of those clauses, some have been repealed by other statutes, some have been rendered useless by
the

the natural change of things, and some, having been at first directed only to personal and temporary objects, became of course extinguished as their several ends were attained.

Of the few that are in any degree constitutional, or which may be, upon any occasion, quoted with relation to the affairs of this age; some are ineffectual, some are imperfect, and some are too partial and confined in their intention to merit those praises that are so lavishly bestowed upon them.

For instance: no part of Magna Charta shines brighter to a common eye than clause XL. *To none will we sell, to none will we deny or defer right or judgment*; and if words could do the business, these are certainly as proper as could be chosen. But, alas! they are no more than words, and a constitution that has no better security does not differ from the most tyrannical and oppressive imaginable. What magistrate is there upon earth so absurdly impudent as to own that his administration of justice is cruel, iniquitous and corrupt; or who is not ready at all times,

times, and without compulsion, to give a profession of the contrary under his hand and seal? That which alone distinguishes free states is, that in such, means are provided by which the magistrate cannot do otherwise than exercise justice speedily and impartially. But no such provision was made by Magna Charta; justice was still administered by the King himself, or, what was the same thing, by judges which he could appoint and remove at pleasure. It was not till after the Revolution that judges were made independent of the reigning King; and it was still reserved for our truly British and patriotic Sovereign to render compleatly effectual that well meant clause of Magna Charta, by making the judges independent of his successors as well as of himself.

The clause XIV, which fixes the constitution of parliaments, will be found by those who, in any degree, affect popular government, extremely lame and imperfect; as it appoints *to be summoned archbishops, bishops, abbots, earls and greater barons, by the King's letters separately addressed to them, and by general*

neral summons, all those who held lands of him in capite, without any mention of boroughs, or of any representation of the trading interests of the kingdom, which were not admitted into parliament till many years after. Indeed the notion that people cannot of right be taxed but by their representatives, let it be derived from what it will, can claim no support or countenance from Magna Charta; since all who are there summoned to parliament for that purpose, are supposed to come of their own right, as the peers do at this day, without any election, mission, or representation whatsoever.

That which, of all the set, does most honour to Magna Charta is clause XXXIX. *No free vassal shall be apprehended, or imprisoned, or dispossessed of his freehold, or outlawed, or banished, or in any way destroyed, nor will we go against him, or send against him, unless by the legal judgment of his peers, or by the law of the land.* But when the merits of this clause are maliciously exaggerated, we are called upon to subtract much from them, by observing that this great security, of being tried by his peers, which is now claimed by

c

the

the lowest Englishman as his birth-right, was understood by Magna Charta only as a sort of aristocratical privilege, from which the greatest part of the nation were, by the common law of the land, excluded. That the benefits of this clause should be afterwards extended to all Englishmen whatsoever, was not in the contemplation of those who penned Magna Charta; nor did it flow either necessarily or accidentally from any part of it; but from causes deeply rooted in the nature of things, and of which Magna Charta itself was only a symptom.

Still these are no more than hints. I do not mean that any judgment should be passed on Magna Charta without its being personally present, and heard in its own defence; and have, therefore, introduced it by way of Appendix to this edition, referring it to my reader to confirm, reject, or extend my observations as his own good judgment shall direct. This, however, I will venture to prophecy, that, whether he begins to read from the beginning, or whether he chuses to read it backwards, from the end, he will not read many lines without being astonish-

ed at the rashness of those who venture to affirm, that whatever is contained in this great charter, is of so sacred and fundamental a nature as not to be repealable, not even by parliament: since he will see, in the very first clause, an acknowledgement of the dominion of the Pope of Rome over the Church of England; and if he begins from the latter end, he will presently find a clause establishing the government of 25 barons, the majority of whom were empowered, by the most extraordinary means, to subject king and kingdom to their arbitrary will and pleasure; with this farther power of filling up their own body for ever, as vacancies by death or otherwise should happen. Popery being thus seen stalking in the front of this famous charter, and arbitrary power in its rear, there are few so scrupulous as not to think themselves entitled, without farther reading, to form very unfavourable conjectures concerning the immutability of the rest. But without requiring them to read a single line of Magna Charta, what shall we say to the consistency of those, who professing, what they call *Revolution principles*, ridiculously attribute to a *royal charter*, in

whatever way obtained; a degree of stability which was never pretended to belong to the most deliberate act of King, Lords, and Commons, in parliament assembled.

By way of introduction to Magna Charta, I have given in my Appendix the preliminary articles of the Barons upon which it was formed, with King John's concessions, restrictions, and enlargements in the opposite column, in the common form of a capitulation; meaning by this form to give as distinct an idea as those two ancient records enable me, of the share which each party had in this famous transaction; and, particularly to shew, that the unfortunate King, in sticking for his own interests, became, at the same time, a sort of advocate for the people, in opposition to the great barons or land-holders, and obtained for them some very valuable privileges, for which, either through the inattention or party-spirit of our historians, they have never, to this hour, been taught to return him any thanks.

One thing more, and then I conclude this long preface.

In

In tracing the constitution of England from its source, I did not think it necessary to carry my enquiries any higher than that great period of our history, the Norman conquest. There are, I know, some very eminent writers who have gone back into the Saxon times, in order to find for their countrymen *a right* to liberty, which they did not *in fact* enjoy under the first Normans: but having long entertained a mistrust of the distinctions *de jure* and *de facto*, when applied to any kind of supremacy in government, I cannot help thinking that those very eminent writers have, upon this occasion, shewn themselves much better antiquaries than philosophers, and much better party-men than either. Would they, for instance, have given us the Roman legionary constitution as a model for that of England, in case the Normans had found and subdued the Romans in England as they did the Saxons; or, having assumed the liberty of vaulting from conquest to conquest, did they stop at the Saxon, and make that their model, only, because it happened better to suit the purposes of the day? The Romans had, surely, as good a right to

to give their laws to Britain as either the Saxons or Normans ; and their priority ought, in the eyes of antiquaries, to have given them the preference. Not such the conduct of the learned Sir Robert Filmer ; he, like a true son of antiquity, fought for the constitution of England in much more remote, much more venerable times, and, at last, happily found it in the ark of Noah, to the great disturbance of Mr. Locke, who was obliged to write a long and elaborate volume to confute him. *Arcades ambo.*——

No people have right to any liberty but what they have the virtue to acquire, nor any longer than they have the virtue to preserve it : and whoever endeavours by metaphysical reasonings or precedents of antiquity to prove that they hold it by any other indefeasible right, acts the part of an enemy to them, as well as to common sense and experience.

May courage, may conduct, may honesty be for ever hereditary and indefeasible in the kings and people of Great-Britain ; and may our happy constitution remain unchanged from generation to generation.

CON-

C O N T E N T S.

SECTION I.

INTRODUCTION, Page 25

SECTION II.

*State of the Constitution of England from
the Conquest to the Accession of the House of
Stuart,* 32

SECTION III.

*From the Accession of the House of Stuart to
the Death of King Charles the First,* 42

SECTION IV.

Supplement to the foregoing, 48

SECTION V.

*The Constitution of England from the Death of
King Charles the First to the Restoration,* 53

SECTION VI.

*Concerning the Authority of the Magistrate in
religious Matters,* 56

SECTION

SECTION VII.

The Constitution of England from the Restoration to the Revolution, 69

SECTION VIII.

From the Revolution to the Accession of the House of Hanover, 74

SECTION IX.

From the Accession of the House of Hanover *
* * * * * 89

A P P E N D I X.

Preliminary Articles presented by the Barons, and agreed to by King John, with the King's farther Additions, Explanations, and Restrictions, 93

Magna Carta Regis Johannis, XV die Junii, MCCXV anno regni XVII, 113

AN
E S S A Y
ON THE
CONSTITUTION OF ENGLAND.

SECTION I.

IT has been usual with those who have written on the subject of government, to enumerate three different forms of it, *viz.* the despotic, aristocratic, and democratic. To these they have found it necessary to add the *mixed form of government*; that is to say, this, and that, and t'other, or what you please; like the &c. at the end of TOM D'URFEY's name; a lazy way, no doubt, of getting rid of their task, and yet very excusable: for had they launched out into a detail of all the different mixtures and combinations of which the different modes of government are susceptible, they or their readers must have been heartily tired before the work could have been half finished.

I, for my part, am far from being ambitious of adding to their list of governments. On the contrary, upon looking it over with a careful eye, I am humbly of opinion, that part of what they have given us may be omitted, without in the least impairing our stock of useful knowledge. Let us ask, for instance——What is despotic government?——Answer——It is that government which depends solely on the will of one man; who is therefore, very significantly, by the Greeks called *Autocrator*.——But where did ever such a man exist?——Answer——In ancient Rome, after it lost its liberty; in modern Constantinople and Petersburg.——But, alas! in all those places, we shall find that the man who is flattered with the pompous title of absolute disposer of all, is himself absolutely at the disposal of a few of his own people, whom he feeds and clothes to assist him in keeping the rest in obedience, and without whose assistance his despotic commands would be very little regarded.

Despotism appears then to be nothing more than a power delegated during pleasure, by the *major vis* of the community, to one man, who is circumscribed by no rules or conditions, but such as are agreeable to those his constituents.

This is certainly the nature of despotism, but it will be, perhaps, found to be the nature
ture

ture of all governments under the sun. The nature of order and government requires that all commands should issue primarily from one mouth ; and should be received, with equal obedience, from all the inferior mouths in administration. Where a petty constable, in the exercise of his office, is not as uncontrollable as the great Mogul, there government is in a sickly state ; and, without some effectual remedy, must fall into anarchy and confusion.

Every government then is, or should be, despotic ; and every chief magistrate is, or should be, an AUTOCRATOR, for the time being : and those who are busily taken up with the consideration of the commonly defined modes of aristocracy, democracy, and so forth, while they fancy they are deep in the essence of government, are only amusing themselves with the paper and packthread of various colours, in which it is wrapt.

Leaving, therefore, all such indefinable distinctions, which, by giving a few gleams of light, are more likely to mislead than to conduct, let the man who is desirous of effectually governing any nation, set himself diligently to find out in what set of hands the power of that nation happens at the time to be lodged ; and having made the discovery, to use the proper means of per-

suading them to constitute him their head and representative. From an exact knowledge of these constituents, arises an exact knowledge of the constitution of each country, and the just application of all the general maxims of government, which, however wise they may be in themselves, may, by misapplication, produce the very reverse of what is expected from them.

For instance. There is no maxim more universally received than this, That *the well being of the people is the supreme law*, and, when well understood, there is none more true or more useful for the preservation of the order and happiness of a state. But then it must be understood by the word *people*, that part only which is constituent of the supreme magistrate, and to whose interests and opinions he must ever pay a religious regard. A very little observation on the state of different countries at the same time, or upon the state of the same country at different times, may be sufficient to convince us that the extending this regard equally to all the people governed, is not necessary to the support of government, and yet, such is the goodness of our great Creator, the author of government, and every human blessing, that he has in his divine wisdom so ordered the connections between man and man, that the advantages of good government, by which I mean simply that which
is

is able to procure to itself perfect obedience, extend themselves, without any particular attention of the rulers, to those who are not, as well as those who are, their constituents.

But although I should make it ever so plain to the meanest capacity, that the chief and almost only maxim necessary for the ease and stability of any government, is to have an attentive eye to the interest of its constituents; yet I am far from thinking the application of this simple truth equally simple and easy. It is by no means easy to find out at all times, with precision, who those constituents are; and the most learned and experienced rulers have brought themselves into difficulties by mistaking them. Nay, there is a certain sort of learning and experience, which, by the confidence that often attends it, is more destructive in this respect than mere ignorance, which, with good sense, is always attended with doubt and caution. The reason of this is, that those constituents are always, more or less, in a fluctuating state, and he who relies upon any reading or experience of the past, may proceed inconsiderately in his attention to the interests of a particular set of men who are now no longer of consequence, to the neglect of those who are actually become so: an error which would not so readily be fallen into by one who has nothing

thing but his own natural sagacity and daily observation to conduct him.

In all countries which pretend to be governed by the help of written laws, it is the common opinion that the constitution of those countries, and the rights of the rulers and ruled, are established and ascertained by those their laws and ancient customs. If this were the case, a very moderate share of reading would qualify a man of a tolerable memory to be a very profound statesman. But unhappily, the reverse of this is true, the laws being not the makers, but the creatures of the constitution and of the constituents of government, who either make or abolish, alter or explain, as best pleases them; or without taking the trouble of either altering or explaining, support the execution of some laws, and oppose the execution of others, as they happen to be led by the present humour or conveniency. When this at any time happens, in opposition to any prince or minister, however sincerely he may be persuaded that he acts according to the constitution of his country, he would do well to contemplate the event as a proof of the contrary, and to endeavour, with all speed, to find out where his error lies.

Before I proceed to the application of these general principles, in an enquiry into the constitution of any particular country, it
may

may be necessary to say something farther towards explaining some of the terms I have used ; which, though common, are, perhaps, understood by me in a sense more or less extensive than usual. By *Government* I mean, as has been already hinted, the single faculty of procuring obedience, that alone being the subject of this Essay, without any regard to the ends for which this obedience is procured. These, which are, or ought to be, the safety and happiness of the community, become a separate, and, in order of time, a secondary consideration ; for it would be, in the highest degree, trifling and childish to employ any thoughts upon the useful exercise of power, till it had been first settled how this power was to be acquired and maintained. By the *major vis*, or supreme force of a society, by which the government is constituted, I mean, simply, a superior power of inflicting bodily destruction, pain, or confinement ; these being the ways in which all penalties for disobedience to government are exacted, and of course, all commands made effectual. And, whether this power is in the hands of a few, or of many, of the rich or the poor, of the wise or the foolish : whether they who possess it are cardinals of Rome, palatines of Poland, janissaries of Constantinople, or burghers of Geneva, they are equally what I mean by the *constituents of government*.

SEC-

SECTION II.

ALTHOUGH every society has its constitution, or general system of government; yet the word *constitution* is seldom heard, except in those countries where, by the constituent power being much diffused, government becomes a common subject of speculation. But no where has it been more used, or its meaning more disputed, than in England, especially for these hundred and fifty years past; and this from several causes. Of these, one is, that men have been led by different party interests and prejudices, to set forth some parts of the constitution and stifle others, according as they best promoted their particular views; but the greatest cause of their disagreement, and which extended itself to the most disinterested, was, that the subject itself had been gradually and imperceptibly changing; so that, were the disputants ever so knowing, and ever so candid, unless they had confined their disquisitions to a certain year, month, and day of the month, on which this constitution is supposed to be measured, they must have ever been at cross purposes.

There

There was a time when the constituents of the English government were a few great land-holders, called barons, whose force, when the major part of it was united against the King, was capable to put chains upon both him and the people, of whom the greatest number were upon all occasions acknowledged to be their slaves or villains, and, in a political sense, had no more right to be reckoned amongst the people of England, than the oxen that assisted them in ploughing their master's lands. This was the time of that so much boasted Magna Charta, most boasted by those who never read it. Those who take that trouble must see, that it was only meant to ascertain the privileges of a small part of the nation, without any idea of what is now called the *natural liberty of mankind*: and that its chief purpose was to establish the dominion of the few landed tyrants, who extorted it from their unlucky sovereign.

There was, indeed, an attempt made to supply what was here defective, and to extend liberty of person and goods to every Englishman without exception, by a charter granted by Richard II. to Wat Tyler and Jack Straw, petitioning at the head of 100,000 of the Commons, in a form not much unlike that which had been used in Runny Mead. But their hastily acquired rights vanished, in a few days, with their hastily ac-

D

quired

quired strength. The wisdom of the legislature declared their demands traiterous and abominable, *against God* and *against reason*; and the royal concessions illegal and void. Those who fancy that liberty may be given to nations, or taken away, by the dash of a pen, are very little instructed in the reality of politics. Such treaties, which the gentlemen of the law have been pleased to call *Charters*, are only effectual while they give form and precision to establishments founded in the actual situation of things. Where real liberty is at bottom it will never be difficult to find parchment to ascertain its rights. The common people of England are now allowed to discover in the Magna Charta of King John, all those liberties which their ancestors in vain expected from that of King Richard, together with many more liberties which these ancient patriots never dreamed of. From whence can arise this strange diversity of sentiment? Is it, ye Metaphysicians, that *nature* is different in one age from what she is in another? or are we to seek for the diversity in the fluctuating mind of man, which is ever ready to pronounce that to be *natural* which prevailing necessity or conveniency has rendered familiar?

Were this subject to be treated as fully as the importance of it deserves, it would be necessary, some where or other, to relate, how the inhabitants of certain places were enfranchised

enfranchised or emancipated from the constitutional slavery in which the common people of England were once involved: how these liberties and immunities were progressively enlarged and ascertained by *voluntary charters* and concessions from their monarchs: how this was done chiefly with a view of opposing that class of men which had procured Magna Charta: how, when disputes with the barons were brought to extremities, commissioners from those enfranchised corporations were called by royal authority to sit in the great council of parliament: and and how this new privilege, so advantageous to the Commons, became, under judicious management, no less advantageous to the Crown.—But these, and many other particulars equally curious and interesting, cannot be brought within the narrow compass that I have prescribed to myself in throwing together these loose hints.

Whatever might give rise to the legislative power of the Commons, it does not appear from any ancient history or record yet produced, to have had an existence till above two hundred years after the conquest, during which time, the contest betwixt the King and a party of his barons was waged with various success, as there happened to be an adroit and resolute king to disunite and crush the opposing barons, or an adroit and reso-

lut head of their faction, to make him feel their united power.

The imperfect manner in which the transactions of these early ages are transmitted to us, leave us much in the dark concerning the real motives of the men, or bodies of men, engaged in them. In such cases we are obliged, for want of facts, to help ourselves out, as we can, by analogies drawn from times of which we have a nearer and more exact knowledge. In these we find, with a very few exceptions, that the chief motive of men, for engaging in political contests, is, the hopes of superiority; and that the causes alledged are seldom other than mere pretexts, often so shallow as to impose upon no body. We must not, therefore, believe that the men of those ages of which I am now treating, were so foolish as to hazard their own lives, and the bread of their wives and children, for the preference of a white rose to a red; or, for what was almost equally insignificant to the greatest part of them, the ambiguous rights of the houses of York and Lancaster. It is much more probable that each of the combatants fought for the advancement of his own house; and that the royal rights, as well as the roses, were nothing more than mere symbols, by which each faction was enabled to distinguish its own partizans from those of its adversary.

In the midst, however, of these contentions amongst the great, the weight of the commons was daily increasing. While the feudal system was entire, the King commanded obedience from his great tenants, and they, again, by those who held of them by virtue of the lands granted to them upon that condition: producing a subordination of all ranks, very like that of an army, for which, in time of need, it was intended to serve. But this piece of machinery, so well contrived for the acquisition of new territory, was apt to grow rusty after some time of quiet, and to break in pieces, when any force was applied to put it in motion. Men are easily led to perform services of fatigue and danger, when a prospect of future reward and advancement is pointed out to them; but when those services are required in consequence of rewards long ago bestowed, the task is seldom performed either willingly or well. Nor was this the only weak part of the feudal constitution. Every vassal, in taking the oath of fidelity and obedience to his immediate lord, took it with a reservation of his obedience to his sovereign lord the King: a clause perfectly well calculated for preventing a ridiculous multiplicity of sovereign princes in one state; but which, in times of faction, was attended with a consequence no less ridiculous, of giving to each servant the doubtful choice of two masters; one threatening, in case of disobedience,

ence, to deprive him of his life, the other of all the comforts of it. To remove those doubts, real or pretended, of the vassal, those who stood in need of his assistance, were generally obliged to purchase it by some new concession, which lessened the power of the superior, and weakened the general system. It is likewise to be observed, that the King, besides his power as sovereign, had certain lands of his own, held by smaller vassals, of which he was the immediate; as well as sovereign lord. To bind these to his interest, when pressed by his rebellious barons, and to inspire them with the greater alacrity for his service, he found it necessary, from time to time, to indulge them in certain immunities, as has been already hinted with regard to the boroughs; and what was once accorded by the King to his vassals, could not safely be denied by the barons to theirs; so that the good-will of the people being, as it were, set up to auction, it is no wonder if at last it brought a good price. And thus it was that the feudal services, in the beginning rigorous and arbitrary, were first softened and ascertained, and then converted into certain annual payments in money, moderate at the time, but which became afterwards very inconsiderable; for the several professions of husbandman, soldier, merchant, and artificer, which in the earlier times had been, for the most part, exercised by the same person, with little dexterity or advantage,

vantage, being, by little and little, distributed into different hands, money was, by little and little, produced as an universal pledge, by which each man's labour might be readily compensated by those who received the benefit of it, and this sort of pledge becoming less valuable in proportion as the quantity of it increased, those rents which had been fixed in the room of the ancient services, became in process of time so inconsiderable, as to appear more like an acknowledgement of superiority than an adequate return for the land so possessed. Another remarkable effect of this decrease in the value of money was, that the ancient regulation which restricted voting freeholds to those of forty shillings *per annum* and upwards, for the sake of excluding a multiplicity of small voters, produced in time a quite contrary effect, and opened a door to a boundless increase of those freeholds, and of course of the constituents of government. And thus liberty produced property, and property produced liberty, by a sort of reciprocal generation, that often leaves us in doubt which to call the cause and which the effect. But nothing contributed more to destroy the feudal slavery, and to diffuse wealth and independence into the lower classes, particularly of the unlanded men, than the wars begun on the continent by Edward III. wars, if we consider their intention, the most senseless and ruinous for the English nation; but which, by the necessary exertions

exertions of government in providing shipping and mariners for the transport of troops, introduced a degree of navigation, of foreign commerce, and even of foreign manufactures, with which England had been before that time unacquainted.

About the time of Henry VII. the effects of this long train of changes became particularly manifest. It was natural for those who had acquired, by their industry or frugality, a competent sum of money, to be desirous of employing it in the purchase of lands; as what would give to their wealth both stability and consideration. But at this time such sales were rendered difficult by ancient statutes still in force, which deprived the great lords of the power of alienating their lands. To remove those difficulties, a new law was passed, which some ascribe to the deep policy of Henry, but which was more probably, only the necessary consequence of the general situation of things. Had there not been a number of people able to buy, and a suitable number willing to sell, an act of parliament to authorise the transfer would have been to little purpose. Be that as it will, by this splitting of lands, and by the plundering of the monasteries in the succeeding reign, the landholders, still the constituent powers of the state, became so numerous and so dispersed, that it was no longer possible for them to unite their forces against the Crown, which, while

while this equilibrio lasted among the inferior powers, ruled all affairs at home and abroad in an absolute and uncontrouled manner.

Queen Elizabeth, with the title of a limited monarch, was as unlimited as any Czarina ; and had nothing to apprehend for her person or government, but from secret plots or assassination, to which those who rule with the fewest partners are the most liable. Her weakened grandees feared and respected her ; the House of Commons, little different, at that time, from the Estates of France, met chiefly to assess themselves for the support of government, without being admitted to any share in the administration of it ; while her people, having never tasted of political power, under its softer and more specious name of Liberty, busied themselves only about their own affairs.

Thus it was *in the golden days of good Queen Bess*, whose reign, prosperous to herself, will ever hold a respectable place in the annals of England ; and it is no wonder : for she ruled her people as it pleased God to permit her ; that is, according to the *actual* constitution of her country at the time ; availing herself of her situation with prudence and fortitude, without which no prince's situation can be very safe or advantageous.

SECTION III.

IT is common with men to form very general principles upon a very narrow experience ; especially when they happen to favour their own vanity or interest. King James, from observing that his immediate predecessors on the English throne had not been controuled, brought himself to believe, not only that they were uncontroulable, but that this their power, merely the effect of accidents, was necessarily attached, by the name of *prerogative*, to their crown and dignity, by the fundamental laws of the land, the laws of nature and nations, and the laws of God himself : splendid rights, which being now devolved upon him, he was not of a disposition to relinquish.

But it is not without a shrewd meaning, that painters and sculptors put a sword into one of the hands of Justice, while she holds the scales with the other : for, let a man's pretensions be what they will, he must always appeal to some superior power, in order to have them acknowledged and guaranteed ; and can never be admitted as judge
of

of them himself; unless, by being possesst of the supreme power, he is able to support his own decision, and, as it is most significantly exprest, to make his pretensions *good*.

This had been happily the case with Queen Elizabeth, but not with those, who for some time filled the throne after her; who were often surprized to find the same pretensions meet with a very different acknowledgment, and were apt to impute their disappointment to every cause but the real one.

The truth was, that, by this time, the seeds were sown for a new set of constituents in the room of the old ones, which had been frittered away into insignificance. Trade, which had taken deep root in the former reign, now sprung up, under the pacific influence of James, in a most luxuriant manner, and put a considerable share of riches into the hands of a set of men little known to Old England; and with regard to whom, consequently, no past experience could be conclusive. The corporation towns in particular became more mighty, while the King, by an untimely imitation of his predecessors, still added to their number. Those corporations, by little and little, felt their consequence, and the King, although he could never distinctly perceive in what it interfered

with his divine right, at last felt it likewise. Flattery and respect are the never failing indexes for pointing out in what quarter real power is lodged. Notwithstanding the exalted idea James had conceived of the royal dignity, he thought it expedient to add further lustre and security to the throne, by getting himself admitted a cloth-worker, and his eldest son a merchant-taylor of the city of London. But this, like most other narcotic medicines, while they give a momentary relief, never fail to increase the distemper. Every condescension to the citizens of London served to increase their opinion of their own importance, and to make farther condescensions more necessary. The spirit of discontent, that is, the spirit of riches, power, and ambition, had gone forth amongst the Commons, and as it diligently sought food for itself in the King's conduct, it could not fail of finding it. His folly and his wisdom, his vices and his virtues, furnished equally matter for complaint. His prodigality in spending large sums of their money amongst his English subjects in princely magnificence, was a grievance, and an intolerable burthen: it was no less a grievance, and no less an intolerable burthen, that he refused to lavish away ten times greater sums in a war every way foreign to England, to be waged from the most foolish and unjust of all motives, the desire of propagating their own religious opinions in the
heart

heart of Germany by the edge of the sword. But it is the nature of all animal force to take pleasure in exerting itself, as it were instinctively, independent of any consequences proposed by such exertion. A young bull shut up in a field, without enemy or rival to disturb him, as soon as his horns begin to sprout, will level his weaponed head against the first tree or post that happens to present itself. In like manner King James's Commons, rejoicing in their newly acquired powers, employed them indiscriminately against every thing he approved of, civil and religious, foreign and domestic; and all this, perhaps, only because they dared, without foreseeing the profit that would one day or other arise from those efforts. The King, with all his boasted king-craft, probably foresaw it as little as they, and after a variety of small squabbles which decided nothing, had the good fortune to be deposited with his ancestors, *incolumi Troja*, leaving to his son all his rights, with all his opinions concerning them.

King Charles the First was blest with many great and amiable qualities. He was wise, brave, just and moderate; and with the utmost sobriety and decency in his private life, possessed an uncommon knowledge of history, laws, and other polite accomplishments becoming a prince. Had he lived fifty years sooner, or fifty years later,
his

his reign would have been, in all probability, as happy and glorious as that of any monarch who ever sat on the English throne. But it was his misfortune to be placed at the head of affairs at a time when the constitution of his country was really altered, while it was apparently the same. Those who came long after him found out the alteration, and took the proper means to prevent the ill consequences of it; but the discovery, though afterwards easy, was perhaps at that time beyond human sagacity, and Charles's good qualities were of a nature more fitted to accelerate, than to retard the mischiefs that surrounded him. A conscientious and fixt regard for what had been delivered to him as the constitution of his country, of which his own rights were undoubtedly a part, made him think it a meanness unbecoming a man and a king to suffer any encroachment to be made on them; never considering that this constitution and these rights were but of human origin, and subject to the like changes with other human affairs.

The increase of riches, by the discovery of America and other improvements in commerce, had by this time produced a general increase of expence all over Europe, and made greater sums necessary for the support of the English government and the dignity of the crown, than the accustomed feudal methods

methods of raising money were sufficient to provide. The new monied interest was able to have supplied this deficiency; but, as it was able to grant, so was it able to refuse; and not being properly applied to, it obliged the King, after his trying some unusual methods of raising money, to purchase every scanty supply with some new condition or other detrimental to his ancient prerogative. The demands of the Commons, pushed on by the city of London, increased as they found their power increase of making their pretensions good; till at last both parties agreed to have their cause tried in the field, the only court of justice where such causes can be tried, where it was given against the King and his adherents, in such a manner, that the constitution of the country, instead of such gradual changes as might suit the real change in the constituents, was at once overthrown and destroyed.

SECTION IV.

IN the short account I have given of the memorable reign of King Charles the First, I have hitherto kept to the illustration of my general principle, *That the constitution of every country constantly changes with its constituent powers*, and have endeavoured to shew, that a want of attention to this, was the cause of the opposition which the unhappy King met with in his government; but I am very sensible, at the same time, that the cause assigned is in no degree adequate to the effect; and that we must have recourse to some other, to account for the violence, outrage, and cruelty, with which this opposition was conducted and finished.

The rich, who in the House of Commons began this opposition, had for its pretext what they esteemed illegal methods of levying money; a subject, on either side of which, laws, customs, and precedents, might have been urged without end, and the opponents might have grumbled long enough without a drop of blood being spilt. Remonstrances might have been voted, and answers given; parliaments dissolved and others called, with much effusion of words
only

only. In the course of those civil wranglings, the King would probably have found out, that, by communicating to a few of the leading men amongst the new constituents, a certain share of the emoluments of government, out of which they might again retail to their constituents that share which in justice belonged to them, he might have been supplied with money from some more plentiful source than tonnage, poundage, or ship-money. Neither, had the new powers been willing to come to blows, were they a match for their King. The people in the country were still much influenced by the old gentry, most of which were attached to the Crown. The Scots, to whom tonnage and poundage was heathen Greek, would have followed their natural inclinations for royalty, and taken up arms in its defence on the first signal. It was in the city of London alone, (not the most warlike part of the kingdom) that there was a possibility of finding such a band of disaffection as would dare to attempt any thing violent against the person of the King and his ministers.

On the other hand, the King was not engaged in any foreign war, and his occasions for money were not so great but that he might have found means of supplying them, without calling parliaments, till such time as he found out the proper methods of rendering them more tractable ; and the execu-

tive power being still in his hands, and still acknowledged by all to belong to him, it is not easy to conceive from what quarter a rebellion could arise, which he could not have easily quashed, with the ruin of those who set it on foot.

Things were in this sickly, but not mortal state, when the unhappy King engaged in a delign, so much the reverse of what is useful and prudent, that he must have forfeited with posterity, all pretensions to the character of a man of sense, had not his sentiments and conduct in this respect been countenanced by those of all the princes of his age. Having been religiously educated, he had been taught by those who had taken upon them the care of his early education, particularly by his father, that a National Church, with all its rites, doctrines, and form of government, was so inseparably a part of the state, that they must both stand and fall together; an opinion founded upon the most shallow and fallacious reasoning, in opposition to the most universal experience. But Charles had long believed it to be just, and having still a regard for his old teachers, was easily brought to believe, that the new and uncommon opposition he met with, was owing to the increase of Puritanism; whereas it is probable that the increase of Puritanism was the consequence, rather than the cause of opposition. Be that as it will, he was resolved to strengthen himself, and what he ap-

apprehended to be the constitution of his country, by exerting an extraordinary zeal for the Church of England, especially for those circumstances in which it was most distinguished from that of the Presbyterians and other dissenters, whom he meant, at the same time, to weaken and diminish, by all manner of discouragements.

The poorest man in the nation has a soul to be saved as well as the richest, and, consequently, no tax, no impost, no exercise can be so universally odious as that which is laid upon consciences. It may be, therefore, easily believed that the rich and ambitious Commons, hitherto baffled in their attempts to reduce the Crown to terms more favourable to themselves, would be very active in fomenting the discontents which this ill-advised measure occasioned: and that a zeal, first feigned, afterwards real, would increase the number of the Puritans, who, in their turn, would enter no less heartily into the state interests of those, who so warmly stood by them in their spiritual. Thus every patriot took to the singing of psalms, with all his might; and every psalm-singing cobbler joined his voice to bawl against state grievances, from the feeling of which, the meanness of his condition had entirely exempted him.

But Charles did not stop here. If he had, his church politics would have, per-
F 2
haps,

haps, been only attended with a slow increase of that disaffection which had been nursed under his father's reign, by the like principles and conduct, and he might have gone to the grave, *cadavere toto*, and without feeling, to any great degree, the bad effects of it. But not contented with making the episcopal government and rites universal in England, where they had always been the national and legal establishment; his ill-counselled zeal hurried him to attempt the same in Scotland, where the Presbyterian had been established for fifty years after the Reformation, and was still contended for by the majority of the Scots as their national worship. Hereupon a tumult, begun, as usual, by the lowest of the populace, was followed by associations of those of middle rank, and headed by some of the principal nobility, who were glad of an opportunity of exercising their turbulent and ambitious spirits, on a larger theatre than their own country afforded.

These *dogs of war* being once let loose, it was easy for their more cautious and more dispersed *brethren* in England to join in the fray, and to bring the unhappy King into that train of difficulties, from whence his courage was unable to extricate him; but, on the contrary, obliged those who had been most forward in opposition, to seek their own safety in his destruction.

SEC-

SECTION V.

THE various factions, civil and religious, which had united in carrying on, what they in their jargon called the *good old cause*, had no sooner got the better, than they found they were all actuated by principles and interests, as opposite to one another as they had all been to their King's; so that having murdered him, and overturned the long established government, they were not able to concert any plan for establishing a new one in its stead; nor were any of those factions sufficiently predominant to force one upon the rest. In this situation, a ruinous anarchy must have ensued, had not the former scenes of contention produced a body of hardy and well-disciplined soldiers, who were able to *give law* and order to their frantic and distressed country.

Supported by such constituents, OLIVER CROMWELL undertook the chief magistracy of Great Britain; and we may easily judge by the long train of success which attended his transactions at home and abroad, that he was sufficiently constituted for all the most valuable purposes of government.

But it is fit to take notice, that although the predominant powers in all changes must necessarily constitute the essence of law and government, yet there are, of those changes, some that may be called, in a peculiar manner, natural, as proceeding from some progressive and gradual cause; while others are only the effects of accidents or violence. And as in the human body there is a progressive change from infancy to full growth, and from full growth to decay, so there are other changes to which the body, by various accidents and mismanagements, is subject, and from which, by proper medicines, or by time only, it may be recovered. Thus, the state of England, during the latter part of the reign of King Charles the First, must only be considered as a violent fever, which, by being left to itself, would soon cease, with all its symptoms and consequences,

Nor did this escape the sagacity of CROMWELL, who, though he saw himself obeyed like a Roman Emperor, knew that this obedience arose from what was most fluctuating and precarious, the authority of a Commonwealth, as they were pleased to call it, but which was, in fact, made of no better stuff than the Commonwealth of Algiers, and very little calculated for the meridian of England, where power must in a little time insensibly slide into the hands of its natural owners, those who are possessed of the property. He
accord-

accordingly made several attempts to change his military constituents for others more natural and permanent, with little success, when death put an end to his projects, and left it uncertain whether he was able to bring about this important point, without which it would have been difficult for him to preserve the power himself, and impossible to convey it to his posterity. And, indeed, any constitution of government which requires from the conductor more than a moderate share of sense, a moderate share of experience, and a moderate share of virtue, does not deserve to be considered as an establishment. The divisions in the army which produced a compleat anarchy after the death of CROMWELL, plainly shewed, that the order which had subsisted for some years, was chiefly owing to his uncommon talents. In this situation any force was sufficient to restore the banished King, as there was no force sufficient so much as to shew itself in opposing his restoration.

SECTION VI.

AMONGST the ancient Romans, whose example has been so much recommended by modern politicians, the chief priesthood was always held by the same persons who were invested with the supreme magistracy; and the affairs of religion went hand in hand with those of the state; upon which they were acknowledged, upon many occasions, to have had a very advantageous influence. But it must be observed, at the same time, that what they meant by religion consisted only of certain rites, so contrived, for the most part, as to give a turn of pleasure and festivity to that otherwise gloomy passion, Superstition; which was never encouraged to shew itself in its genuine colours, unless in certain times of calamity, when public terror became necessary for the public safety. A religion like this, which operated upon men's passions only, without letting their understandings take any share, gave great power to the magistrate who presided over it; and as his regulations were of themselves easy to be observed, and equally agreeable to the common interests as to the passions of the people, they never questioned his authority with regard to them. The
moral

moral duties were enjoined by the civil laws, and no assent was required to any speculative propositions whatsoever. These were left to the philosophers to wrangle about in their schools, without either the state or the people troubling their heads about them. The belief of the people concerning their gods, whether historical or fabulous, consisted merely of matters of fact; and being received chiefly upon the authority of their nurses and poets, they were at liberty to extend or contract their belief to what degree their tempers or understandings inclined them, without the possibility of a dispute arising on the subject. As they admitted of a multiplicity of inferior deities, along with the One Almighty Power; so the magistrate did not restrict the number, but suffered the people, of whose religion he was the overseer and conductor, to introduce what new ones they pleased from foreign countries; naturalizing, by the same wise policy, the gods as well as the men of their conquered provinces. Every town, every parish, every man and woman had their divinity, to whose particular protection they recommended themselves, without thinking themselves precluded from applying to other gods or goddesses, upon those particular occasions which came more immediately within their several departments. All were equally comprehended in the established religion, and all equally countenanced by the state. No man

was excluded from attending the public worship, and no man was compelled or bribed to attend. Devotion was understood to be its own reward. To sum up all with what was most material for the public peace and happiness, the state, out of its ordinary revenues, took upon itself the building of the temples, the expence of the public ceremonies, and the maintenance of the priests; who thus became servants of the government, and useful instruments in preserving the people in their allegiance.

Such a religion as this may be easily conceived to be the *religion of the magistrate*; and such a one certainly existed for many ages, without history being able to afford us one instance of persecution, rebellion, or other civil disquiet, of which difference in religion was either the cause or the pretence.

On the other hand, the Christian religion, designed in a peculiar manner for the establishment of peace and good-will amongst men, was ushered into the world without the concurrence of the civil magistrate, and disclaiming all pretensions itself to worldly power. During the life of its great Founder, and of those Apostles to whom he delegated his divine power, it appeared in this amiable shape only; but soon after falling under the management of mere men, it became subject to all the corruptions and inconveniencies

conveniencies to which human affairs are liable.

The communion of goods amongst those who received the doctrines of Christ, an institution seemingly so well adapted to the benevolent spirit of them, was the great and obvious cause of this corruption; and while it operated rapidly in increasing the number of those who received these doctrines, operated no less rapidly in counteracting the good effects of them. For the care of managing and distributing this public money being committed to certain officers, chosen by all the members of this corporation out of their body; they, when the stock increased to a certain degree, found the office so agreeable, that they spared no pains in order to get themselves elected into it. Every means that avarice or ambition could suggest, was deemed lawful, and all the arts of loquacious sophistry employed by bustling men, to draw the multitude from one another; till the plain, pure, and useful doctrines of Christ were drowned in an ocean of metaphysical quibbles, no wise calculated to improve the understandings, any more than the morals, of those to whom they were addressed.

In the mean time, the various advantages, spiritual and temporal, attending the being members of such a corporation, produced

one in every town; and these being united by the same name and interest, kept up a reciprocal correspondence and assistance from town to town throughout the vast Roman Empire.

This is a short state of the primitive Christian corporation or church; yet, short as it is, may be sufficient to explain many things related of it, which appear at first sight dark and contradictory. As for instance, it is known that the primitive Christians had no public exercise of their religion; and it is no less universally believed, that this was owing to its being prohibited by their Roman governors. But this could not be the case, as it is no less known that the Roman government gave an universal protection to all sorts of public worship. The true cause was, that the nature of the Christian institution at that time did not admit of any public appearance. Praying, singing of psalms, and other acts of devotion, were but part of the purposes of their coming together: they likewise, at their meetings, eat and drank, and the poorer sort had money distributed to them out of the common stock. In these meetings they inflicted censures on those of their body who had been guilty of small offences, and expelled, or excommunicated, those whose contumacy rendered them unworthy members of their society. There, likewise, were heard and decided all their civil differences;

rences; esteeming it scandalous to bring any such before the Heathen magistrate, who they soon learnt to look upon as impious and impure.

On which ever side this abhorrence began, it could not fail of becoming, in a little time, reciprocal. The tie of money, now inseparably connected with the doctrines, and which bound the believers so fast one to another, necessarily obliged them to shut their doors against every one who had not been formerly received as a member; and while this their exclusion procured them the ill-will of all who did not belong to them; the secrecy which necessarily attended their meetings, gave malice room to suggest what it pleased, and often to load them with crimes of which they were entirely innocent. This will account for many of those martyrdoms we read of under the Roman Emperors; where men were in reality punished for supposed offences against the laws, while they believed themselves suffering on account of their opinions only.

But while they were often harrassed and punished for crimes of which they were innocent, they were daily employed in promoting what was, in its consequences, a very great crime against the state, without its being noticed by government, till it was too late to prevent it. These good
people,

people, under the notion of religion and brotherly charity, were in reality raising a formidable republic, an *imperium in imperio*, united by the two strongest ties, religion and worldly interest, and which did not acknowledge the authority of the civil magistrate.

Upon the first discovery of this unauthorised and illegal association, the magistrate endeavoured to hinder and suppress it by a variety of prohibitions, and rigorous punishments. But they availed nothing. It was impossible for those people to separate in their minds the temporal constitution of their society (which it was certainly within the department of the civil magistrate to regulate or suppress, whenever it became hurtful or dangerous to the state) from their religious opinions, which no power on earth has a right to meddle with. Nature revolts against persecutions supposed to proceed from so unjust and absurd a cause; and many joined the Christians upon that account, who were little actuated by motives either of interest or devotion.

At last Constantine, out of pressing necessity, more than any deep laid scheme, made use of this current, no longer capable of being stemmed, to forward him to the throne; and the church, which had some time before thriven by the persecution, now throve no less by the favour of the government.

ment. It still continued, however, to be a republic independent of the state ; while it was at the same time powerful enough to influence all the public affairs.

And now the effects of this corporation fund shewed themselves in their most mischievous and abominable shape. Every greedy, turbulent, or ambitious man was desirous of becoming an overseer, or bishop, and when got into that station, left no means untried to extend his dominion. Trifling distinctions with regard to matters in their own nature altogether unintelligible, were invented ; and the truth of them being decided by a majority of votes, those of the minority were branded by the name of heretics, or separatists, and persecuted by their conquerors with unrelenting malice.

Julian, upon his accession to the empire, saw clearly the distemper under which the Roman state laboured ; and tried to remedy it, by endeavouring to restore the ancient *religion of the magistrate*. But nature is never retrograde. She often, indeed, returns to the place from whence she sets out ; but it is always by a new and round-about road. Great wit, scholar, and philosopher as he was, he had not learnt that the utmost human wisdom can do, is to turn the actual situation of things to the best account ; but not to change it. Neither were
 I his

his endeavours, to prevent the Christians from persecuting one another, attended with better success. The bone of contention was still among them, and they continued to snarl and to bite one another in spite of all his clement and father-like injunctions.

But,

—*quod optanti Divum promittere nemo
Auderet, vivenda dies en attulit ultro.*

The distemper, after having baffled all the state physicians, at last produced a cure for itself. As the riches of the corporation increased, so did, in a much greater degree, the avarice and ambition of its managers; till they at last appropriated to themselves the whole of the public stock, to the total exclusion of the Christian people, for whom it had been originally intended; excluding them, at the same time, from the right of election, which they established in their own body, now disciplined into a due subordination, with the Bishop of Rome at its head.

This great change in the revenues of the church, was attended with one, as great, in its religious concerns. It being now no longer necessary to court the suffrages of the people, no more of that bewildering eloquence was addressed to them: and all heresies ceased; for there was now an end of all doctrine. Enquiry, which had been so earnestly

earnestly recommended by the artful leaders of every faction, was now as universally discouraged; and submission alone recommended in its stead.

A new form of religious worship was introduced, which spread the understandings of the people, and captivated alone their senses and passions. A great number of those persons, male and female, who had distinguished themselves by their labours and sufferings in promoting the interests of the church, were raised to the rank of divinities, and had temples, statues, and days of worship appointed them. Their lives were written, full of miraculous stories, which were believed, because they were entertaining; while they, at the same time, under this childish garb, inculcated sentiments extremely favourable to the interests of those who wrote and dispersed them. Pompous processions, chorusses, lustrations, and all the superstitious rites of every age and country, especially those of their Heathen ancestors, were readily adopted; and being christened, became perfectly Christian. The Bible was now in the hands of the clergy only; and metaphysical controversy, which had been, a little while before, the constant occupation of all ranks of men and women, was now confined to a few petulant Monks; who, above appealing to the people, wrangled with one another, like the ancient Heathen
H Philosophers,

Philosophers, in a Latin jargon, which the people neither understood nor desired to understand.

Thus was peace restored to the Christian Church, and the *religion of the magistrate* once more established, with a few changes in names only, the very same that it had been under the pontificate of Julius Cæsar. The pontifical title, indeed, took place of the imperial; but still the chief magistrate of Rome was the commander of all Europe, whose kings were no better than his lieutenants, in whose several dominions he kept garrisons of Monks, black, white, and gray, upon those possessions which the Christian corporation had by various means acquired; whose business it was to keep those petty kings in due obedience; and to forward the tribute which was annually due from them to their Roman master.

But this night of repose could not last for ever: some of the Pope's own legionaries, in a fit of discontent, mutinied, and appealed to the Christian people; discovering to them that charter of their ancient rights, the Bible; which the established Hierarchy, in the fullness of their security, had neglected to destroy. The goods of the corporation were now once more to be scrambled for; reasoning, for this purpose, was once more introduced, and *Chaos is come again.*

No

No religion which requires an assent to any particular opinions, can ever become a religion for the magistrate. The spirit of civil government is to square the actions of men, by the authority of the laws; that is, by the authority of force, to the exclusion of all private reasoning to the contrary. On the other hand, the spirit of an evangelical religion is to establish the rights of conscience, or private opinion, in matters of opinion, in opposition to all the powers upon earth. A magistrate, therefore, with the Bible in one hand, and the sword in the other, acknowledging his duty to convince, and, at the same time, urging his right to strike, is, of all animals in the creation, the most absurd. Yet from this absurdity were kindled those flames, which, for about two centuries after the Reformation, laid waste Germany, France, and England; and which at this time, are, in some countries, rather smothered than extinguished.

Not to anticipate what may be more properly introduced into the following sections, I will conclude this with observing, that the government of the Christian Church underwent the same changes with the government of ancient Rome, to which it succeeded. For it was first a monarchy, next an aristocracy, then a democracy, which increased in bulk till it became an anarchy; from that it flourished for some time as a despotism;

and at last mouldered away by the defection, one by one, of its provinces. Peace be with them both. Some other Empire may arise, more powerful and more extensive than the Roman Empire; and some other Pontiff may appear, more universally revered than the Roman Pontiff: but nothing we have ever read of the past, gives us reason to imagine that the city of Rome, or the Popish religion, will ever again be restored to the dominion they have lost.

SECTION VII.

KING JAMES the First had transmitted, as it were by blood, to all his descendants of the name of STUART, this most perverse notion, that an uniformity in religion, that is, in certain ceremonies, inseparably attached to certain metaphysical opinions, was absolutely necessary towards the stability of civil government, and the peace of society.

Even Charles the Second, who seems to have made little use of religion in the conduct of his own private affairs, was still persuaded of its being an useful tool in the art of government. Perhaps his brother, more active; as well as more mistaken, might have a considerable share in cherishing this opinion; but, come it from what quarter it will, we see the court, during the reign of Charles the second, constantly supporting some religious party against the rest, and never professing an inclination to tolerate, except with a very ill-covered design of rendering the most intolerating religion predominant.

This circumstance, perfectly accidental, while it helped to perplex King Charles's
affairs,

affairs, renders it difficult to trace the progressive changes in the constitution of the country during his reign ; and to assign to each effect its proper cause.

It is, however, certain that, notwithstanding the blood which had been shed to restrain the royal prerogative within those bounds, which the *real* constitution in the beginning of King Charles the First's reign had endeavoured to set it ; Charles the Second, by the imbecility of his opposers, was restored to it, in its utmost plenitude ; and had reason to believe himself as absolute as Queen Elizabeth, or Henry the Eighth.

But, though the forms of government, and the legal constitution, were the same that they had been under those princes, the real constitution was much altered ; and the same causes which had checked the exertion of the ancient royal powers in his father, were still more able to operate against himself. Trade, by being carried on altogether for the private advantage of each trader, is little affected by any change or confusion in government ; and while it is capable of languishing under improper regulations, will thrive in the midst of anarchy itself. The great naval armaments fitted out under Cromwell, give us a very manifest proof how respectable the navigation and foreign commerce of England must have been at that

that period ; and the progress of it is generally believed to have been much forwarded by the famous Act of Navigation, passed about the same time.

Trade continued to increase under Charles, but as he was no merchant himself, a sufficient share of this national riches did not flow into his pockets, to answer all the demands his favourites made upon them. To raise money, prerogative was no longer a safe instrument ; and he was, therefore, obliged to have recourse to a variety of mean artifices for that purpose, which exposed his insincerity, and discredited him with his people. He either did not know that a great part of the property, and with it a great part of the power of the Commonwealth, was lodged in the hands of the Commons ; who feeling this their liberty and property to be their own, would not suffer any part of it to be fraudulently or forcibly taken from them, and without a valuable consideration : or knowing this, he thought, and thought rightly, that to purchase powers from the people, was acknowledging a right in them, very contrary to the system he had been taught : and, if at any time he went into this measure, it was rather as a temporary expedient, and when he was hard pressed for money, than from any settled principle of government.

It

It appears, however, from several pieces of management in Charles and his ministers, that the power of the people was felt and respected by them. The practice of addressing, so favourable to sedition, and so insignificant in the support of government, was now revived, in favour of the court; a practice, by which the most trifling knots of men were authorised irreverently to approach the throne; and to return from thence with new assurances of its weakness, and of their own importance.

In short, after twenty-four years reign of shifts and expedients, Charles left the constitution of England in a state as undecided as that in which he found it; and as it was taken up by James upon the same political principles, his reign cannot be considered but as a continuation of his brother's.

And here we must observe, that the extreme desire shewn by Charles and James to rule without controul, had nothing singular in it. Who is there that chuses to be controuled? What alone distinguished them, in this particular, from other princes, was their constantly employing such improper means to this end, as drew upon them a constant and vigorous opposition; and of course a constant detection of those sentiments, which, by being gratified, would have been, at the same time, less exposed.

For

For although bigotry had a great share in the zeal of James for the introduction of Popery, it was not, perhaps, his principal motive. It was equally the cry of his friends and of his enemies, that the establishment of Popery would be immediately followed by that of slavery; and he steadily and stupidly pursued the road, which the folly of some, and the malice of others, thus pointed out to him; not considering that the means were infinitely more difficult to attain than the end; and that, by pursuing such, he furnished his political opposers with that most popular and most formidable of all weapons, the cry of *Liberty of Conscience*, for his destruction. The army, the natural defence of government, in all disputes merely political, proved of no service to him in this. Had he consulted the annals of the Emperor Julian, whose indiscretion in this respect he imitated, without his heroic qualities or amiable accomplishments, he would have learnt, that while many of the nobility accommodated their religion to that of the Emperor, the soldiery adhered stedfastly to that of the populace, of which they are always to be reckoned a part.

The event of this contest was such as was naturally to be expected from one set on foot by a prince, in opposition, not only to the *real* constitution of his country, but likewise to the common sense, and the common rights of mankind.

SECTION VIII.

THE words Whig and Tory occur so often in all the books which treat of the history and government of England, that to omit them altogether in this Essay, might look like an omission of something very material; especially in treating of the transactions of those times which immediately follow the expulsion of King James. And, indeed, for rendering the relation of those transactions intelligible, and likewise for giving to a philosophical mind a clear insight into the true nature of party and faction in general, nothing can be more useful than a minute detail of the pretended principles and real conduct of those two famous parties. But such a detail is little necessary for my purpose, of marking out the great lines of the constitution of England. In all governments which are in any degree popular, faction must make as necessarily and unavoidably a part, as trumps do in the game of Whist; but whether those trumps be black or red, whether they be called spades or diamonds, is not at all essential to the game. Whatever were the particular tenets of the Whigs and Tories, either in religion or politics, the sum total of their conduct amounted only to this; that which soever
of

of them happened to be *in* place, did its utmost to forward the measures of government, while the party which was *out*, did its utmost to confound and retard them: each party availing itself, for this end, of such means as their different professions furnished them with. The Tories, for instance, having been long used to profess a particular zeal for the established church, contrived certain religious tests, which, like sieves, suffered only those of their own caliber to pass through into places of trust and profit; while the Whigs, in their turn, taking advantage of certain particularities in the newly established government, contrived political creeds, which the Tories, who had long professed an adherence to the doctrines of hereditary indefeasible right, were not able to swallow.

Those pretended principles and distinctions were nothing more than temporary tools of faction, which they were ever ready to drop as well as to use, whenever the real ends of faction were to be promoted by so doing; and the more strictly we examine, the more we shall be satisfied, that there never was any essential distinction in party, except that of the party governing, and the party opposing government. To this last, the title of Guelph, Ghibelene, Round-head, Frondeur, and a variety of other ridiculous nicknames have been given, none of them

attended with any consistent meaning, most of them without any meaning at all; but if, laying aside those cant terms, we should call any of them by the name of *opposition*, we shall seldom fail of observing a most satisfactory agreement betwixt their name and their conduct. In opposition alone, they will be found steady and consistent, amidst innumerable deviations from common sense, public utility, and what is more extraordinary, from private gain. From this spirit of opposition, did the party under King William insist upon his sending back his 2000 Dutch soldiers, and keeping 2000 English undischarged in their room, without suffering themselves to reflect, that these 2000 Englishmen in spatterdashs, might have been more usefully employed in time of peace, in carrying on the manufactures and agriculture of their country; and that by sending away those Dutch, the nation was, in fact, deprived of 2000 useful hands. It was this spirit which prompted them to labour so much the resumption of crown lands; although there was nothing plainer than that the greater the King's hereditary domain, the more independent he would be of his parliament; the reverse of which appears generally to have been their intention. It was this spirit of opposition which can alone, with consistency, account for their being no less regardless of their own private advantage, than they were of public liberty;

liberty; by making reiterated attempts to obtain a law for excluding members of parliament from places of trust and profit. In short, with whatever utility to society this sort of opposition may be attended, it is evident, from a thousand facts, that the opposers are impelled to the good work by a mere animal instinct, leaving the consequences of their opposition to blind chance, or, to speak more justly, to the care of the great author of government, and of men, whose wisdom is no less manifested in their folly than in any other part of his handy work.

As to religious party, it acquired no additional strength by the accession of King William. Born and bred in a country which had recovered its civil independence by its exertions against ecclesiastical tyranny, and which, situated in the midst of powerful and persecuting neighbours, was still obliged to maintain its independence by the same principles by which it was acquired; it was natural for him to endeavour to propagate in England, those extensive notions of religious liberty which had been found in Holland so conducive to peace at home and strength abroad. He had, however, the mortification to find, that a nation which, at the hazard of all the calamities attending a civil war, had ignominiously driven out their lineal and constitutional king, chiefly
on

on account of his having endeavoured to encroach upon their religious freedom, which they then called the *common right of mankind*, was soon dissatisfied with their *deliverer*, for his sincere desire to extend and establish this *common right*. But as he had no bigotry of his own to force upon them, their opposition to his impartiality did him but little mischief; and the opposition of the different religious parties to one another, served sometimes to forward his affairs, while he was looking out for a surer and more rational way of forwarding them. It may be observed, that in religious quarrels, government is almost always the aggressor, and almost always comes off with the worst. The house of Stuart had been weak enough, from a false theory, to introduce religious party, as a proper tool in government; and the people, after having found by experience that it cut best when in their own hands, were very unwilling to part with it. Thus, as the waves of the sea do not immediately fall after the wind ceases, this religious folly, or villainy, continued to perplex the public affairs some years after the royal hands which had raised it were withdrawn.

King William's fondness, however, for a project called the *Comprehension*, meant for uniting the Church with the Dissenters, by a compromise in doctrines and ceremonies, (a silly project which had been so often attempted in various

various ages and countries, without the least success) shews how little he was instructed in the true cause of religious animosities, and that we are altogether obliged to his being a Dutchman, and not to his being a philosopher, for that toleration and religious quiet, which we now enjoy, and of which he certainly sowed the seeds.

To return to my main subject: if the leading people in England, and those who complained the loudest against the extension of the royal prerogative, had been sincerely desirous of setting legal bounds to it, there never could have been wished a more favourable time for that purpose, than upon the expulsion of King James, when the throne was declared vacant, the apparent heir laid aside, and the crown to be disposed of by the people upon any terms they thought fit. But as it is probable that every patriot, in striving to acquire freedom or power to the people, had his own particular share of it chiefly at heart, so it was natural for him to take the shortest way of obtaining what he aimed at; and as no man tries to enter at the back door, till he finds the fore door shut against him, it became a strife who should be foremost in surrendering every thing, without reserve, into the hands of the new made King: none caring to propose any thing for limiting that power in which every one had secret hopes of participating. But this golden
dream

dream did not last long: they soon found that they could not all be place-men, and those who could not, became, of course, Jacobites; or else, as they were pleased to call themselves, *friends to their country*.

Neither did William's golden dream last much longer than theirs. He found himself, indeed, put in possession of all the legal rights and prerogatives that had ever been claimed or exercised by any of his predecessors; but the crown was hardly set on his head before he discovered that those ancient prerogatives were become of very little consequence; and that with them all, he was little better than a royal pageant; the appearance of a King without the power. Inflamed from his cradle with an ardent desire to oppose the power of France, he wished for a sceptre, and for life itself, only as they were subservient to that purpose, in which he met with frequent checks and disappointments from the jealousies of his English subjects; jealousies which he imagined were all to have been removed by the removal of Popery; not considering how easy it was for faction, from whence those jealousies were originally fomented, to find a new object for them in every new situation.

Before he had an opportunity of doing any thing which could awaken the nation's jealousy, the revenues which had been usually granted

granted to his predecessors for life were granted to him only from year to year, or for a short limited time; and the greatest part of them were strictly appropriated to certain public purposes, and of which accounts were to be laid before parliament as often as required. The supplies necessary for carrying on an expensive war, in which his whole soul was engaged, were obtained with the utmost difficulty. Every session opened with clamour and discontent, which all the art and dexterity of the King and of his very able Ministers was hardly sufficient to allay by the expedients then in use of playing one cabal against another, and of giving hush-money or places to their leaders. But this last expedient, the best that had been hitherto found out, became every day more difficult and ineffectual, by various counterminings of the opposing party, who, eager to pull down those in power, made use of a variety of means tending to lower and distress Government itself; not considering, or perhaps not knowing, the end of their opposition, which was to become governors themselves in their turn. But of all the mines so sprung, none so much affected the constitution as the law for making elections periodical, called the Triennial Act; by which the dependence of the Members of the House of Commons upon their constituents, the people, was better ascertained than ever; and the duties to be paid upon

K

every

every new election rendered more considerable, as well as more frequent.

In ancient times the relation betwixt the Members of the House of Commons and their constituents was of a quite different nature. Their service being then attended with private loss and fatigue only, was compensated by daily wages from those who employed them, proportioned to the frugality of the times. Afterwards there was a time, when those wages, ceased and nothing was given on either side, when virtue seemed to be its own reward, or when the honour of serving their country was received as a sufficient recompence for the trouble of it.— Under Queen Elizabeth, one Thomas Longe, the Member for Westover, was convicted of having procured his election by four pounds given to the high bailiff and burgeses, and stands recorded in the journals as a man of *little capacity*, probably for having been so weak as to own that he had given so much money for what was to bring him in nothing. Queen Elizabeth's members brought no liberties up with them to market, because those who sent them had no more liberty than was necessary for their own use: none that they could conveniently dispose of: and the Queen was too good an œconomist to give money for what she already possessed. About the middle of King Charles the Second's reign, when the liberty of the subject became

came more extensive and more diffused, the advantage of having seats in parliament began to be felt; and still more in the Whig and Tory times of King William, so that much pains and expence were employed to obtain them. To reimburse those Members the great charges they had been at in getting themselves elected, became very burthensome to Government; and yet to gain a majority of them was absolutely necessary; as the House of Commons, by a method then introduced of tacking any proposition, however foreign, to the bill for supplies, had rendered themselves, in fact, masters of the whole legislature.

The King, in this state of things, was often brought to the disagreeable necessity of employing that dangerous and ineffectual vestige, of the ancient regal power, his own negative, to defeat bills after they had passed both Houses; many of those questions which were carried in his favour, were carried by a majority of one, two, or three voices only; it was even proposed to have Commissioners of Trade appointed by Parliament: probably with a view of introducing other appointments of the same kind: and the Constitution of England was manifestly changing into that of a factious and fluctuating Commonwealth, little different from anarchy; when Providence, ever watchful over the Monarchy of England, produced out of those

every obstructions and difficulties the means of raising it to a degree of glory unknown to former ages.

To explain this, it is necessary to take notice, that before the reign of King William no method was known of raising money for the exigencies of the year, except that of levying equivalent taxes or impositions, which when great, as must necessarily happen in times of war, were much felt and complained of by the people in general, without any part of them being gainers by the public loss; so that, although a foreign war was often made a pretence by former Kings and Ministers, in order to obtain a sum of money, there was nothing they in reality more dreaded. But now a method was happily devised of abundantly supplying the Crown without burthening the people, by means of voluntary contributions of those who were eager to contribute any sums of money, *moyenant* seven or eight per cent. while the good people of England were kept easy, by having no more taxes imposed on them than were barely sufficient to pay the annual interest of the sums so advanced.

As this method was tried at first with caution, both by those who borrowed and those who lent the money, the good effects of it were little felt during the reign of King William; who lived to the last in a
factious

factionous and tottering state: but from the first discovery of this scheme of anticipation we may date that great change in the Constitution, which has brought England and Great Britain to that height of power to which it is since arrived. From that moment the ability of England for carrying on foreign war began to manifest itself, first in unprofitable squabbles about what was called the Balance of Europe; but afterwards in brilliant conquests, on her own account, in all quarters of the globe. From that moment the Constitution of England began to be actuated by a spirit somewhat similar to that which actuated the Constitution of ancient Rome; where a foreign war never failed to stop the mouths of the seditious, and to put an end to domestic broils. War, in England, became advantageous to almost every rank of men: the poor wished for it, as the greater demand for labourers increased the price of labour: the rich wished for it, as the greater the demand for money, the greater the advantage to those who were possessed of it, while those in the administration of government were easily persuaded into a measure which, with such universal approbation, put such unlimited power into their hands.

—*sic fortis Etruria crevit,
Scilicet et rerum factâ est pulcherrima Roma.*

Perhaps the mere landed gentry, perhaps posterity, had some cause to complain of this new discovery: but the voice of the mere landed gentry is little heard in the noisy metropolis; and as for the discontents of posterity, it must be owned they were never formidable to any administration.

With the debt of the nation, so grew, in proportion, its credit; and, by degrees, produced a new set of men, who, without being necessarily connected with the land, with the trade, with either of the Houses of Parliament, or with any corporation or regular body of men in the kingdom, became no less formidable than they were useful to Government; as will be more fully set forth in the sequel of this Essay.

And here the question may very naturally arise: How a nation thus circumstanced could ever enjoy an interval of peace? Or, how war, carried on by such means as have been mentioned, could ever end but by universal Monarchy, or complete ruin? And, indeed, in ancient Rome, where the Constitution of the city (that is the interests of the prevailing citizens) inclined it strongly to war, the temple of Janus was seldom or never shut. But though the resemblance betwixt the two States will hold in some circumstances, there are others in which they are very much unlike. War and peace have still been
found

found in Great Britain to follow and relieve one another, like the other ordinary vicissitudes of hunger and satiety, labour and rest, sleep and watching. After some years of profusion, money may become difficult to be procured, even at an extravagant price; the clamours of those who feel the increasing taxes, without their attendant *douceurs*, may at last become so loud as to make an impression; and above all, the natural fickleness of mankind, which makes every change desirable, may sooner or later concur with the party wanting to be in power; who, by becoming, or threatening to become, the majority, may get an end put to war upon rational and moderate terms.

This is what we may conjecture concerning the natural death of war in Great Britain, but of which experience has not yet furnished us with sufficient proofs; most of her wars having been brought to an untimely end, cut off, as it were, in their bloom, by accidental changes in those who had the immediate management of public affairs, and from which no general conclusions can be safely drawn. That war, for instance, called with great propriety the Duke of Marlborough's, might have been carried on many years longer, to the great glory of the nation, and the great emolument of himself and his associates, had it not been for a whimsical concurrence of events, singly too trifling

trifling to deserve a place in history; but which, by producing a change in the Sovereign's inclination, and one at the same time in the House of Commons, proved sufficient to displace a victorious General, to put an end to a most successful war, and to overthrow a Ministry established upon the firm basis of the Constitution at that time, such as it has been described.

SECTION IX.

THE passions and follies of men are often of great use for their better subjection and government ; but they are too transitory and fluctuating for a statesman to confide in for any length of time. Their interests are much more simple, much more constant, and much more intelligible, both for the governors and the governed ; and therefore a much more solid foundation for a lasting establishment. The zeal for Church, so efficacious in the last years of Queen Anne, like a blaze of straw, was soon burnt out, and left those who rejoiced over it in cold and darkness ; while those who had unadvisedly kindled it became sensible of their error, and were careful never to hazard the like again. By the Convocation being no longer suffered to deliberate about church matters, the church, that is, the clergy, ceased to be a separate body from the state ; and seeing no hopes of preferment but from the good-will of the state-rulers, all creeds, with the controversies necessarily attending them, were laid asleep ; they contenting themselves with the quiet exercise of their legal rites, and the quiet enjoyment of their legal revenues.

L

Thus

Thus the *religion of the magistrate*, which so many fools and tyrants had in vain endeavoured to establish by sword and faggot, was established under the benign influence of King George the First, without either cost or pains. From that time Religion has been no more capable of being used as a tool of faction; and will, therefore, never more be mentioned in this Essay.

* * * * *

APPENDIX.

THE Articles I, II, III, &c. which make the ground work of the following Capitulation, are literally translated from those which were presented by the Barons to King JOHN, of which the identical parchment, written in a very fair hand, with King JOHN's seal appended to it, is still extant and in good condition. This valuable record, after having remained some centuries at Lambeth, where it seems to have been deposited at the conclusion of the Treaty there made with Lewis the Dauphin of France in 1217, was carried from thence amongst other writings when Archbishop Laud was sent to the Tower; afterwards it fell into the hands of Bishop Burnet, and is now in the possession of his granddaughter, Mrs. Mary Mitchell. Those who want to be more particularly informed concerning the history of these Capitula, and of all the Great Charters made in consequence of them, will meet with much satisfaction in reading the learned introduction to the edition of these Charters elegantly published by Mr. Blackstone in 1759.

The opposite column is made up of what appears besides in the Magna Charta itself, with relation to these Articles; and which, though seemingly additions, will be found in almost every particular, restrictive of what the Barons had required, and favourable to the King and to those classes of the people who were dependent upon him only. The figures upon the edge, point out the place in Magna Charta of these additions: and under some of the Articles I have thrown such observations as occurred to me upon the history, manners, and language of those times.

After this I have given the Magna Charta entire, taken from that of the Museum, as I find it published by Mr. Blackstone.

My Appendix concludes with a very curious trial, preserved in the Year Books published by Serjeant Maynard.
There

There is no difficulty in finding records to prove the hardships which the common people of England suffered from the tyranny of their Lords, but I have met with none more satisfactory than this trial ; as it shews in what light personal liberty was considered in a court of justice, so low down as the reign of Edward the II^d, after all the confirmations of Magna Charta had passed, and after parliaments had been established almost in the same form as they are at present.

If, by exhibiting these frightful images of ancient slavery, I can bring my fellow citizens to be better pleased with the degree of freedom they now enjoy, I shall think all the pains I have taken very well bestowed.

PRELIMINARY ARTICLES

PRESENTED BY

THE BARONS,

AND AGREED TO BY

KING JOHN,

WITH THE KING'S FARTHER ADDITIONS,
EXPLANATIONS, AND RESTRICTIONS.

I.

That, after the death of their ancestors, heirs who are of full age shall have their inheritance by the ancient relief to be expressed in the Charter.

Granted.

2

The heir or heirs of an earl, for the entire barony of the earl, shall pay one hundred pounds; the heir or heirs of a baron, for his barony, one hundred pounds; the heir or heirs of a knight, holding of us in capite, for the entire knight's fief, one hundred shillings at most; and whoever owes less shall pay less, according to the ancient custom of fiefs.

II.

That heirs who shall be under age, and shall be in custody when they come of age, shall have their inheritance without relief or fine.

Granted.

3

III.

That the guardians of the heirs lands shall take reasonable issues, customs, and services, without destruction, and

Granted.

4

But if We shall commit the guardianship of any land to the sheriff, or to any other who

or waste of *his men* or goods ; and if the guardian of the land shall make destruction and waste, he shall lose the wardship, and the guardian shall keep up the houses, parks, warrens, ponds, mills, and other things belonging to the land, out of the issues of the said land.

who ought to render account to us of the issues, and he should make destruction and waste of the wardship, we will take from him an amends, and the land shall be committed to two legal and discrete men of that fief, who shall be accountable for the issues to us or to those to whom we shall assign them.

The same shall be done in the case that we give away or sell the guardianship of such land.

Provided likewise that in restoring the land to the heir furnished with ploughs and wains, the wainage shall not be demanded of the guardian in better order than the time of the wainage shall require, and the issues of the land may reasonably afford.

6

That the heirs shall be so married that they be not disparaged, and by the *advice* of their nearest in blood.

The heir shall be married without disparagement, and the marriage shall be *shown* to the next of kin of the heir, before it be contracted.

Without waste of his Men.] In the laws of William the Conqueror published by Lambard, it is ordered that no one shall sell his man out of the country. *Prohibemus ut nullus vendat hominem suum extra patriam.* And by the 19th canon of the synod of London, held in the same reign, 1075, the thunders of the church are levelled against those who sell men like horses. But notwithstanding these prohibitions spiritual and temporal, the practice of selling the villains, like any other stock upon the lands, long continued, and is no doubt what is here alluded to.

IV.

A widow shall not give any thing for her dower nor marriage portion after the decease of her husband, but shall remain in his house forty days after his death, and within that term there shall be assigned

Granted

7

The inheritance to be such as her husband and she had held at the day of his decease.

signed to her her dower and marriage portion, and she shall forthwith have also her inheritance.

Marriage portion.] All the translations of Magna Charta which I have had an opportunity of looking into, render the word *maritagium* by *marriage*; which seems to be giving one word without an idea instead of another; for what can be meant by assigning a widow her *marriage* within forty days after the death of her husband? To say it means *giving her liberty to marry*, besides touching very imperfectly a subject which is clearly discussed in article 17, it is repugnant to clause 17 of Magna Charta, which answers to the article before us, where we find *nec aliquid det pro dote suo vel maritagio suo vel hereditate sua*. There *Maritagium* stands in the middle betwixt two words of property, and is seemingly under the same predicament. I do not insist upon my meaning being the true one, but only that it is a meaning, and one that may be supported by the authority of Regiam Magistratem, and its learned commentator Skene.

V.

That the King or his bailiff shall not seize any land for debt, if the chattels of the debtor suffice, nor shall the sureties of the debtor be distrained while the principal debtor is sufficient for payment; but if the principal debtor shall fail in payment, the sureties may, if they please, have the lands of the debtor till such time as the debt shall be fully discharged, except the principal debtor can shew that he is from thence discharged against the sureties.

Granted.

9

VI.

The King shall not give leave to any baron to take aid of his own free vassals, unless for redeeming his own body, or for making his eldest son a knight, or for once marrying his eldest daughter, and this he shall do by a reasonable aid.

Granted.

15

VII.

That no one shall do more service for a knight's fief than is due for it.

Granted.

16

Nor for any freehold whatsoever.

VIII. That

VIII.

That the Common Pleas shall not follow the court of our Lord the King, but shall be appointed in a certain place; and that recognizances shall be taken in their proper counties in this manner; that the King shall send two justiciaries, at four times of the year, who with four knights of the same county, elected by the county, shall take assizes of *novel disseisin*, *mord ancestor*, and *darrein presentment*; nor shall any one be summoned upon this account, except the jury and the two parties.

IX.

That a free vassal be amerced for a small offence according to the nature of the offence; and for a great offence in proportion to its greatness, saving to him his contentement; a villain to be in like manner amerced, saving to him his wainage, and in like manner a merchant, saving to him his merchandize, by the oaths of honest men of the neighbourhood.

Granted. 17, 18, 19

The two justiciaries shall be sent by our chief justiciary if We should happen to be out of the kingdom.

The assizes shall be taken in the county, at the county place and day.

Granted. 20

A villain shall be amerced in this manner, if he fall into our mercy. Earls and barons shall be amerced only by their peers.

Amerced.] The common law of England distinguishes betwixt amercements and fines. Amercements have always been assessed by a jury in the manner appointed by this article; but fines have been always imposed by the King's judges, and in some former reigns when offences have been committed against the crown, those fines have been often complained of as excessive. See the observations in the preface upon clause 40 of Magna Charta.

Villain—amerced.] It appears by this, that although villains were so far slaves that they and their posterity for ever were the property of their landlords, yet they were supposed to have property of their own, which in case of misdeemeanor might be forfeited. They seemed to have filled that useful rank in life which is now filled by the country farmers: with this difference, that they were not at liberty to leave their lands, with which they were supposed at that time to have some natural connection.

X.

That a clericus shall be amerced by his lay fief, according to the manner of the others aforefaid; and not according to his ecclesiastical benefices.

Granted.

XI.

That no town shall be amerced for making bridges to rivers except where they have been used anciently by law so to do.

Granted.

23

Neither town nor *man* shall be otherwise amerced.

XII.

That the measure of wine, grain, and the breadths of cloth and of other things shall be amended, and the same of weights.

Granted.

35

There shall be one measure of beer through our whole kingdom; and one measure of ale; and one measure of grain, that is to say, the quarter of London; and one breadth of cloth dyed, and of ruffets and halbergets, to wit, two ells within the lists, it shall likewise be done with the weights as with the measure.

XIII.

That the affize of *novel disseisin*, and of *mord-ancestor*, shall be shortened, and the same of other affizes.

Granted.

19

And if in the county day the affizes cannot be taken, so many knights and freeholders shall remain of those who had been present on the county day, by whom judgment may be sufficiently awarded, according as the business shall be, more or less.

XIV.

That no sheriff shall meddle with the pleas belonging to the crown without coroners, and that the county and hundred shall be at their ancient farms without any augmentation, except in the King's demesne manors.

Granted.

24

No sheriff, constable, coroner, or other our bailiff, shall hold pleas of our crown.

All wapentakes, and tithings, likewise shall be at their ancient farms.

XV.

That if any one holding of the King, shall die, it shall be lawful for the sheriff, or other bailiff of the King's, to seize and inventory his chattels in the sight of legal men, in such manner, however, that nothing be thence taken away till it be fully known if he owes any clear debt to the Lord the King, and then the debt to the King shall be paid, but the residue shall be paid to the executors for fulfilling the testament of the deceased, and if nothing is due to the King, all the chattels belong to the deceased.

Granted.

26

This is understood of a lay fief, and our bailiff shall shew our letters patent of summons for the debt.

The residue shall belong to the deceased, except their reasonable shares to his wife and children.

XVI.

That if any free vassal shall die intestate, his goods shall be distributed by the hands of his near relations, and at the sight of the church.

Granted.

27

Saving to every man the debts due to him by the deceased.

XVII.

That no widows shall be obliged to marry themselves while they are willing to live without husbands, in such manner, however, as that they shall give security that they will not marry themselves without the assent of the King, if they hold of the King, or of the lord from whom they hold.

Granted.

8

XVIII.

That no constable, or other bailiff, shall take grain, or other chattels without giving money for it immediately, unless the same be deferred by the will of the seller.

Granted.

28

XIX.

That no constable shall be empowered to distrain any knight for giving money for the ward of a castle, if he is willing himself to perform the duty in person, or by another good man, if he himself for any reasonable cause is not able to perform it, and if the King shall lead him into his army he shall be freed from the wardship according to the length of time.

Granted.

29

He shall have the same liberty if we *send* him with our army.

That he shall be with our army upon our account.

XX.

That no sheriff or King's bailiff, or any other, shall take horses or carts of any free vassal for carriage, except with his own consent.

Granted.

30

XXI.

That neither the King or his bailiff shall take any other man's wood either for castles or any other works, except by the good will of the person to whom the wood belongs.

Granted.

31

XXII.

That the King shall not keep the land of those who are convicted of felony, except for a year and day, and then it shall be returned to lord of the fief.

Granted.

32

XXIII.

That all wears shall, for the future, be removed from the Thames, the Medway, and throughout all England.

Granted.
Except upon the sea coast.

33

XXIV.

That the writ, called Precipe, shall not for the future be made to any one, on ac-

Granted.

34

count of any tenement by which a free vassal may lose his court.

Free Vassal.] The term *liber homo* stands here to signify a Lord of a Manor, as it does in Art. XXVII. See the notes upon Art. XXIX.

XXXV.

That if any one be disfeised, or kept out by the King without trial, from the possession of his land, liberties, and right, they shall be immediately restored to him; and if any dispute should arise upon this, it shall be decided by the judgment of the twenty-five Barons, and that those who had been dispossessed by the father or brother of the King, shall have justice without delay by the judgment of their Peers in the King's court, and if the King ought to have the same term with others who undertake the crusade, then the archbishop and bishops shall decide, at a certain day the appeal being withdrawn.

XXXVI.

That nothing shall be given for a writ of inquisition concerning life, or members, but shall be freely granted without payment, and shall not be denied.

XXVII.

That if any one holds of the King by free-farm, or by socage, or by burgage, and of another by military service, the Lord the King shall not have the wardship of the knights of another's fief on account of burgage

Granted.

52

As for all those things of which any person has been dispossessed without legal judgment of his peers, by our father Henry, or brother Richard, and which we have in our hands, or which others hold, and we are bound to warrant, we shall have respite till the ordinary term of crusaders, except those concerning which plea was raised or inquisition made by our precept before our taking the cross upon us, but when we shall have returned from our pilgrimage, or if we remain altogether from it, we will immediately exhibit ample justice.

Granted.

36

Granted.

37

or

or soccage, nor ought he to have the wardship of the soccage, burgage, or free-farm; and that the free vassal shall not lose his military service on account of small serjeantry, as those who hold any tenement by rendering from thence knives or arrows or such like.

XXVIII.

That no bailiff shall put any man to his law, upon his single accusation, without credible witnesses.

XXIX.

That the body of a free vassal shall not be seized nor imprisoned, nor shall he be disseised or out-lawed, nor banished, nor in any manner destroyed, nor shall the King go or send against him with force, unless by the judgment of his peers, or by the law of the land.

Unless that fee-farm to us military service.

Granted.

38

Granted.

39

XXX. That

Free Vassal.] From a very ill-grounded supposition that these charters are written in Roman Latin, *liber homo* has been commonly translated, a free man. *Homo* is only a latinised word from the Norman *homme*, signifying a *subject*, *vassal* or *servant*, and is exactly similar in sense to the word *Mann* of the Teutonic nations, from whom the customs, which made such a word necessary are derived. From these again are formed the words *homage* and *manschaft*, both signifying acknowledgment of subjection and servitude. *Liberi homines*, or free vassals, were such as were free from all services, but that of serving in war at their own expence; and as this service was dangerous as well as burthenfome, so had it many honourable privileges and distinctions annexed to it, which were not shared by such as held their lands by other tenures, or who lived by other professions. There are some very ingenious writers who have asserted, that the title and privileges of a *liber homo* were extended to all who were not actually Villains. But this opinion seems to be derived from no ancient authority, but barely from that mistake in language which I have observed at the beginning of this note. Having translated *liber homo*, a free man, they concluded that all were such who were not *bond men*. Had they looked into the ancient Norman writers, they would have found *liber homo* often rendered by the word *gentlehomme*, from whence no such conclusion as theirs can be drawn. But without going so far out of our way to prove that there had been a middle rank of men, we have only to consult article IX. of the record before us, where we will find

find mention made of *merchants* as of a class not comprised either in that of *liberi homines* nor of *Villains*.

Disseiss'd.] In the subsequent great charters of Henry the Third, there is here added, *of his freehold*. Why the great men who prevailed in that reign, thought this explanation necessary is uncertain, but it helps still farther to point out that these *liberi homines* were no other than the *military tenants*, or *freeholders*, who were at that time few in number and of considerable rank in the commonwealth.

XXX.

That justice shall not be fold, nor deferred, nor forbidden.

Granted.

40

XXXI.

That merchants shall have safe going and returning, for buying and selling without any evil tolls, by the just and ancient customs.

Granted.

41

Not only to natives, but also to foreigners merchants; except in time of war, who shall then be safe with us, provided our merchants are found to be safe in their countries.

XXXII.

That no scutage or aid be imposed in the kingdom unless by the common-council of the kingdom, except for redeeming the King's body; and making his eldest son a knight; and for once marrying his eldest daughter; and this shall be a reasonable aid. In the same manner it shall be with the talliages and aids from the city of London, and from the other cities, that from thence have their liberties; and that the city of London shall have fully her ancient liberties and free customs both by water and by land.

Granted.

12, 13, 14.

Moreover we will, that all other cities, and boroughs, and towns, and ports, shall have all their liberties and free customs.

And for holding a common-council of the kingdom, for imposing aids otherwise than in the three cases aforesaid, or from imposing scuttages, we will cause to be summoned archbishops, bishops, abbots, earls, and greater barons, separately, by our writs; and we will, besides cause to be summoned, in general, by our sheriffs and bailiffs, all those who hold of us in chief, for a certain day, that is at the distance of 40 days, or less, and to a certain place; and in all the writs of such summons, we will express the cause of the summons, and so the summons

summons being made, the business shall proceed at the assigned day, according to the determination of those who shall be present, although all that were summoned should not come.

From thence have their liberties.] There were certain towns, [such as Lynn and Yarmouth, which were under a degree of vassalage to the city of London, and paid customs to it.

City of London.] Though, as we are informed by Matthew Paris, the common people of London were enemies to the barons and their enterprise; yet many of the leading citizens were deeply engaged with them, and it was by their means, without doubt, that these clauses were inserted for giving farther weight and lustre to their city. It will be seen on the opposite column how the King very artfully disappointed their ambition by granting more than they asked,

Moreover, we will.] There is an energy in the words *preterea Volumus* in Magna Charta, sufficient to point out to us some particular exertion of the royal will upon this occasion, even although that valuable monument of antiquity, the preliminary articles had been lost.

And for holding.] The whole of this clause is left out in the subsequent confirmations of Magna Charta by Henry III. and in the first of them it is said, that *by the advice of his prelates and great lords, the consideration of that, as well as of some other important clauses in his father's great charter, had been deferred for some more convenient time.* It is pretty evident

XXXIII.

That it shall be lawful for any one to go out of the kingdom, and to return, saving his fidelity to our Lord the King, except in the time of war, for a short space of time, on account of the common utility of the kingdom.

XXXIV.

If any one shall have borrowed any thing from the Jews, more or less, and dies before that debt is discharged, the debt shall not bear interest while the ear is under age, of whomsoever he may hold; and if that debt shall fall into the hands of the King, the King shall not take any more than the chattels contained in the writing.

Granted.

42

Except those who are imprisoned or out-lawed according to the law of the kingdom, and people of a country at war with us, and merchants, concerning whom it has been already spoken.

Granted.

10

XXXV. If

XXX.

If any one die, owing a debt to the Jews, his wife shall have her dower, and if children remain, they shall be provided for, according to the real estate of the deceased, and out of the residue, the debt shall be paid, saving to the lords their service. In the like manner shall be done with other debts, and that the guardian of the land shall render to the heir when he comes to full age, his lands furnished with ploughs and other instruments of husbandry, according to what the issues of these lands can reasonably afford.

Granted

11

XXXVI.

If any one shall hold of any escheat, as of the honour of Warringford, Nottingham, Boulogne, Lancaster, or from other escheats that are in the hand of the King, and are baronies, and shall die, his heir shall not give other relief, nor do to the King other service than he would have done the baron; and that the King shall hold that barony in the same manner as the baron had held it.

Granted.

43

evident, that the part of the constitution of parliament relative to the smaller freeholders, had been thrown in by King John for his own advantage; and, though not agreeable to his great lords, they durst neither then nor afterwards, enter into direct opposition to it. Perhaps the bringing them all to parliament was found tumultuary and impracticable and till such time as method was devised of their coming to parliament, by their chosen representatives, it is probable the smaller freeholders, or as they are still called in Scotland, the *lesser barons*, did not appear in parliament at all. This undecided state of what was become a very important part of the constitution, is sufficient to account for the anarchy and bloodshed which afflicted the long and unhappy reign of Henry III.

XXXVII. That

XXXVII.

That fines that are made for dowers, marriage portions, inheritances, and amercements, unjustly and against the law of the land, shall be altogether laid aside, or shall be made by the judgment of the 25 barons, or by the judgment of the major part of them, together with the archbishop and others whom he has a mind to bring along with him, in such manner, that if any one, or any number of the 25 shall have the like complaint, they shall be removed, and any others substituted in their place, by those who remain of the 25.

Granted.

55

For this single purpose only, they shall be elected and sworn.

XXXVIII.

That the hostages and writings shall be returned which had been delivered to the King for his security.

Granted.

49

XXXIX.

That those who are without the forest shall not come before the justices of the forest unless they are impleaded or sureties; and that bad customs with regard to forest and foresters, warreners and sheriffs, and rivers, be amended by 12 knights of every county, who ought to be elected by the legal men of the said county,

Granted.

48

Within forty days after the inquisition is made, these bad customs shall be entirely abolished by the said jury, in such manner, however, that information shall be given first of it to Us, or to Our chief justice if we should happen not to be in England.

XL.

That the King shall remove altogether from his service the kindred, and the whole following of Gerat De Atyes, that for the future

Granted.

50

ture they may hold no office, to wit : Engeland, Andrew, Peter, and Gyon de Cancell, Gyon de Cygon, Matthew de Martiny and his brothers, and Geoffrey his nephew, and Philip Mark.

XLI.

And that the King shall remove the foreign mercenary foldiers, crofs-bowmen, cavalry and infantry, who come with horses and arms to the hurt of the kingdom.

Granted. 51
Immediately upon the restoration of peace.

XLII.

That the King shall not make justiciaries, constables, sheriffs and bailiffs of any but those who know the law of the land, and are willing well to observe the same.

Granted. 45

XLIII.

That barons who have founded abbies, and hold them by royal charters, or ancient tenor, shall have the custody of them when they become vacant.

Granted. 46

XLIV.

If the King shall have disseised the Welch, or shall have kept them out of their lands or liberties, or any thing else in England or in Wales, they shall be immediately returned to them without plea, or if they shall have been disseised or kept out of their holdings in England by the father or brother of the King, without the judgment of their peers, the King shall exhibit justice to them, in the same manner as he exhibits justice to the English

Granted. 56, 57

But with regard to what the Welch have been dispossessed of by our father Henry, or our brother Richard, and which we either hold in our own hand, or are obliged to warrant, we will have respite till the common term of those

English according to the law of England, in what concerns the holdings in England, and concerning the holdings in Wales, according to the laws of Wales, and concerning the holdings in the marches, according to the laws of the marches; the Welsh shall do the same to the King and to his people.

XLV.

That the King shall render the son of Lewelin, and all the hostages besides from Wales, and the writings that have been delivered to him, for the security of the peace.

XLVI.

That the King shall conduct himself towards the King of Scots, with regard to the delivering of the hostages, and concerning his privileges and his rights, according to the form he uses to the barons of England,

Unless with regard to these two last articles, it ought to be otherwise, by writings which the King has in his possession, with the council of the archbishop, and of others which he shall think fit to bring along with him.

XLVII.

That all the forests that have been afforested by the King in his own time, shall be unforested, and so shall be with the rivers that have been appropriated by him.

XLVIII.

Moreover, all these customs and liberties which
the

those signed with the cross, except for those concerning which plea has been raised or inquisition made by our precept before our undertaking the crusade, but when we shall return or shall perhaps desist from our pilgrimage, we shall immediately exhibit entire justice, according to the laws of the Welch and the parties aforesaid.

Granted.

58

We w conduct ourselves with regard to Alexander King of Scots, with regard to the delivery of his sisters and hostages, with regard to his liberties and rights, according to the form we use to our other barons of England, unless it should be otherwise by writings which we have from William his father, heretofore King of Scotland, and this shall be by the judgment of his peers in our court.

Granted.

47

Granted.

60

the King has granted to be held as far as belongs to him towards his own vassals, all the rest of the kingdom, both clergy and laity, shall observe as far as belongs to them towards theirs.

XLIX.

This is the form of the observation of the peace and privileges betwixt the King and kingdom. The barons shall chuse 25 barons of the kingdom such as they shall think fit, who shall, to the utmost of their power, observe, keep, and cause to be observed, the peace and privileges which our Lord the King has granted to them, and has confirmed by his charter; so that if the King or his justiciary, or his bailiff, or any of his officers, shall have been culpable in any thing against any body, or shall transgress any of the articles of peace and security, and the fault shall be shewn to four barons of the 25 barons afore said, these four barons shall go to our Lord the King, or to his justiciary, if the King shall be out of the kingdom, and laying before him the transgression, shall require that the transgressions shall be amended without delay; and if the King, or if the King should be out of the kingdom, his justiciary should not amend it within a reasonable time to be ascertained in the charter, the afore said four barons shall report the cause to the rest of the 25 barons, and the 25, with the community
of

Granted.

61, 62

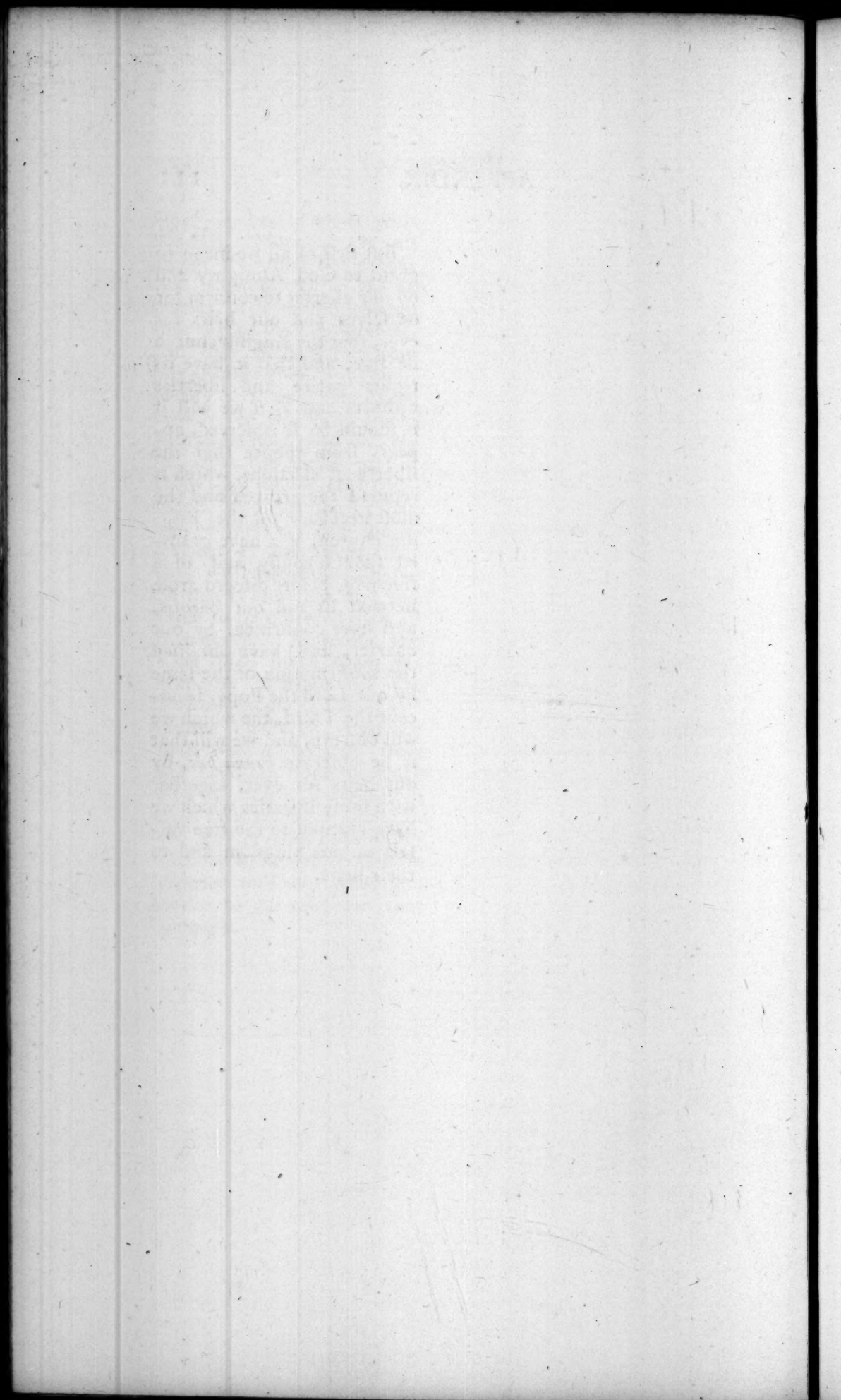
It shall be within forty days, computing from the time in which the transgression shall have been shewn to us or to our justiciary.

of the whole land, shall distress and grieve the King by all means within their power, to wit, by seizing his castles, lands, and possessions, and by all other possible means, till such time as it shall be amended according to their will and pleasure, saving the person of the Lord the King, of the Queen, and of their children; and when it shall have been amended, they shall obey the Lord the King as before. And whatsoever person of the land shall have a mind, he shall swear for the execution of the aforesaid, that he will obey the command of the aforesaid 25 barons, and that he will grieve the King with all his might along with them, and the King publickly and freely shall give licence of swearing to whosoever shall have a mind to swear, and shall never hinder any one to swear, but all those of the land, who of their own accord refuse to swear to the 25 barons concerning the distressing and grieving the King along with them, the King shall cause such persons to swear by his mandate, as has been said. Moreover, if any of the 25 barons aforesaid shall die or shall depart the land, or by any other means shall be hindered, so as not to be able to execute the aforesaid, those who shall be remaining of the 25, shall elect another in his place, as they shall think fit, who shall be
sworn

sworn in like manner with the rest. Moreover, in all things of which the execution is committed to the 25 barons, if it should happen that the 25 shall be present, and they shall differ from one another about any thing, or any of them being called cannot, or will not, come, it shall be held good and valid, what the major part of them shall resolve and command, as if all the 25 had agreed thereto; and the aforesaid 25 shall swear, that they will faithfully observe all that is aforesaid, and will cause to be observed with all their power. Moreover, the King shall make them secure by writings of the archbishop and bishops, and master Pandolph, that he shall obtain nothing from our Lord the Pope by which any of these conventions shall be revoked or diminished, and if any such thing shall be obtained, it shall be reputed null and void, and never to be used for that purpose.

1, 63

But first of all we mean to grant to God Almighty and by our charter to confirm for ourselves and our heirs for ever, that the English church be free, and that it have its rights entire and liberties unhurt, and that we will it it should be so observed, appears from thence that the liberty of elections, which is reputed the greatest and the most necessary for the English church, We have granted spontaneously and of a free will, before discord arose betwixt us and our barons, and have confirmed, by our charter, and have obtained the confirmation of the same by our Lord the Pope, Innocent the Third, the which we will observe, and we will that it be observed *bonna fide*, by our heirs for ever, together with those liberties which we have granted to the free vassals of our kingdom and to their heirs.



MAGNA CARTA
REGIS JOHANNIS,
XV DIE JUNII, MCCXV.

ANNO REGNI XVII.

JOHANNES Dei gratia rex Anglie dominus Hybernie dux Normannie Aquitanie et comes Andegavie archiepiscopis episcopis abbatibus comitibus baronibus justiciariis forestariis vice comitibus prepositis ministris et omnibus ballivis et fidelibus suis salutem Sciatis nos intuitu Dei et pro salute anime nostre et omnium antecessorum et heredum nostrorum ad honorem Dei et exaltationem sancte ecclesie et emendationem regni nostri per consilium venerabilium patrum nostrorum Stephani Cant' archiepiscopi totius Anglie primatis et sancte Romane ecclesie cardinalis Henrici Dublin' archiepiscopi Willielmi London' Petri Winton Joslini Coventr' et Benedicti Roff' episcoporum magistri Pandulfi domini pape subdiaconi et familiaris fratris Emirici magistri militie templi in Anglia et nobilium virorum Willielmi Mariscalli comitis Penbrok Willielmi comitis Sar' Willielmi comitis Warren Willielmi comitis Arundell Alani de Galweya constabularii Scottie Warini filii Geroldi Petri filii Hereberti Huberti de burgo seniscalli Pictavie Hugonis de Nevill' Matthei filii Hereberti Thome Bassiet Alani Bassiet Philippi de Albi Roberti de Roppel' Johannis Mariscalli Johannis filli Hugonis et aliorum fidelium nostrorum.

1. In primis concessisse Deo et hac presenti carta nostra confirmasse pro nobis et heredibus nostris in perpetuum quod Anglicana ecclesia libera sit et habeat jura sua integra et libertates suas illesas et ita volumus observari quod apparet ex eo quod libertatem electionum que maxima et magis necessaria reputatur ecclesie Anglicane mera et spontanea voluntate

O

ante

ante discordiam inter nos et barones nostros motum concessimus et carta nostra confirmavimus et eam optinuis a domino papa Inocentio tertio confirmari quam et nos observabimus et ab heredibus nostris in perpetuum bona fide volumus observari Concessimus etiam omnibus liberis hominibus regni nostri pro nobis et heredibus nostris in perpetuum omnes libertates subscriptas habendas et tenendas eis et heredibus suis de nobis et heredibus nostris.

2. Si quis comitum vel baronum nostrorum five aliorum tenentium de nobis in capite per servitium militare mortuus fuerit et cum decesserit heres suus plene etatis fuerit et reliquium dedebat habeat hereditatem suam per antiquum relevium scilicet heres vel heredes comitis de baronia comitis integra per centum libras heres vel heredes baronis de baronia integra per centum libras heres vel heredes militis de feodo militis integro per centum solidos ad plus et qui minus debuerit minus det secundum antiquam consuetudinem feodorum.

3. Si autem heres alicujus talium fuerit infra etatem et fuerit in custodia cum ad etatem pervenerit habeat hereditatem suam sine relevio et sine fine.

4. Custos terre hujusmodi heredis qui infra etatem fuerit non capiat de terra heredis nisi rationabiles consuetudines et rationabilia servitia et hoc sine destructione et vasto hominum vel rerum et si nos commiserimus custodiam alicujus talis terre vicecomiti vel alicui alii qui de exitibus illius nobis respondere debeat et ille destructionem de custodia fecerit vel vastum nos ab illo capiemus emendam et terra committatur duobus legalibus et discretis hominibus de feodo illo qui de exitibus respondeant nobis vel ei cui eos assignaverimus et si dederimus vel vendiderimus alicui custodiam alicujus talis terre et ille destructionem inde fecerit vel vastum amittat ipsam custodiam et tradatur duobus legalibus et discretis hominibus de feodo illo qui similiter nobis respondeant sicut predictum est.

5. Custos autem quamdiu custodiam terre habuerit sustentet domos parcos vivaria stagna molendina et cetera ad terram illam pertinentia de exitibus terre ejusdem et reddat heredi cum ad plenam etatem pervenerit terram suam totam instauratam de carrucis et wainnagiis secundum quod tempus wainnagii exigit et exitus terre rationabiliter poterint sustinere.

6. Heredes maritenter absque disparagatione ita tamen quod antequam contrahatur matrimonium ostendatur propinquis de consanguinitate ipsius heredes.

7. Vidua post mortem mariti sui statim et sine difficultate habeat maritagium et hereditatem suam nec aliquid det pro dote sua vel pro maritagio suo vel hereditate sua quam hereditatem maritus suus et ipsa tenuerint die obitus ipsius mariti et maneat in domo mariti sui per quadraginta dies post mortem ipsius infra quos assignetur ei dos sua.

8. Nulla vidua distringatur ad se maritandum dum voluerit vivere sine marito ita tamen quod securitatem faciat quod se non maritabit sine assensu nostro si de nobis tenuerit vel sine assensu domini sui de quo tenuerit si de alio tenuerit.

9. Nec nos nec balivi nostri seisiemus terram aliquam nec redditum pro debito aliquo quamdiu catalla debitoris sufficiunt ad debitum reddendum nec pleggii ipsius debitoris distringantur quamdiu ipse capitalis debitor sufficit ad solutionem debiti et si capitalis debitor defecerit in solutione debiti non habens unde solvat plegii respondeant de debito et si voluerint habeant terras et redditus debitoris donec sit eis satisfactum de debito quod ante pro eo solverint nisi capitalis debitor monstraverit se esse quietum inde versus eosdum pleggios.

10. Si quis mutuo ceperit aliquid a judeis plus vel minus et moriatur antequam debitum illum solvatur debitum non usuret quamdiu heres fuerit infra etatem de quocumque teneat et si debitum illud inciderit in manus nostras nos non capiemus nisi catallum contentum in carta.

11. Et si quis moriatur et debitum debeat judeis uxor ejus habeat dotem suam et nichil reddat de debito illo et si liberi ipsius defuncti qui fuerint infra etatem remanserint provideantur eis necessaria secundum tenementum quod fuerit defuncti et de residuo salvatur debitum salvo servitio dominorum simili modo fiat de debitis que debentur aliis quam judeis.

12. Nullum scutagium vel auxilium ponatur in regno nostro nisi per commune consilium regni nostri nisi ad corpus nostrum redimendum et primogenitum filium nostrum militem facendum et ad filiam nostram primogenitam semel maritandam et ad hec non fiat nisi rationabile auxilium simili modo fiat auxiliis de civitate London.'

13. Et civitas London' habeat omnes antiquas libertates et liberas consuetudines suas tam per terras quam per aquas Preterea volumus et concedimus quod omnes alii civitates et burgi et ville et portus habeant omnes libertates et liberas consuetudines suas.

14. Et ad habendum commune consilium regni de auxilio assidendo aliter quam in tribus casibus predictis vel de scutagio assidendo summoneri faciemus archiepiscopos episcopos abbates comites et majores barones sigillatim per litteras nostras et preterea faciemus summoneri in generali per vicecomites et ballivos nostros omnes illos qui de nobis tenent in capite ad certum diem scilicet ad terminum quadraginta dierum ad minus et ad certum locum et in omnibus litteris illius summonitionis causam summonitionis exprimemus et sic facta summonitione negotium ad diem assignatum procedat secundum consilium illorum qui presentes fuerint quamvis non omnes summoniti venerint.

15. Nos non concedemus de cetero alicui quod capiat auxilium de liberis hominibus suis nisi ad corpus suam redimendum et ad faciendum primogenitum filium suum militem et ad primogenitam filiam suam semel maritandam et ad hec non fiat nisi rationabile auxilium.

16. Nullus distringatur ad faciendum majus servitium de feodo militis nec de alio libero tenemento quam inde debetur.

17. Communia placita non sequantur curiam nostram sed teneantur in aliquo loco certo.

18. Recognitiones de nova disseisina de morte antecessoris et de ultima presentatione non capiantur nisi in suis comitatibus et hoc modo Nos vel si extra regnum fuerimus capitalis justiciarius noster mittemus duos justiciarios per unumquemque comitatum per quatuor vices in anno qui cum quatuor militibus cujuslibet comitatus electis per comitatum capiant in comitatu et in die et loco comitatus assisas predictas.

19. Et si in die comitatus assise predictae capi non possint tot milites et libere tenentes remaneant de illis qui interfuerint comitatui die illo per quos possint judicia sufficienter fieri secundum quod negotium fuerit majus vel minus.

20. Liber homo non amercietur pro parvo delicto nisi secundum modum delicti et pro magno delicto amercietur secundum magnitudinem delicti salvo contentemento suo et mercator eodem modo salva mercandisia sua et villanus eodem modo

modo amercietur salvo wainnagio suo si inciderint in misericordiam nostram et nulla predictarum misericordiarum ponatur nisi per sacramentum proborum hominum de visneto.

21. Comites et barones non amercientur nisi per pares suos et non nisi secundum modum delicti.

22. Nullus clericus amercietur de laico tenemento suo nisi secundum modum aliorum predictorum et non secundum quantitatem beneficii sui ecclesiastici.

23. Nec villa nec homo distringatur facere pontes ad riparias nisi qui ab antiquo et de jure facere debent.

24. Nullus vicecomes constabularius coronatores vel alii balivi nostri teneant placita corone nostre.

25. Omnes comitatus hunderedi wapentak' et trething' sint ad antiquas firmas absque ullo incremento exceptis dominicis maneriis nostris.

26. Si aliquis tenens de nobis laicum feodum moriatur et vicecomes vel balivus noster ostendat litteras nostras patentes de summonitione nostra de debito quod defunctus nobis debuit liceat vicecomiti vel balivo nostro atatchiare et imbreviare catalla defuncti inventa in laico feodo ad valentiam illius debiti per visum legalium hominum ita tamen quod nichil inde amoveatur donec persolvatur nobis debitum quod clarum fuerit et residuum relinquatur executoribus ad faciendum testamentum defuncti et si nichil nobis debeatur ab ipso omnia catalla cedant defuncto salvis uxori ipsius et pueris rationabilibus partibus suis.

27. Si aliquis liber homo intestatus decesserit catalla sua per manus propinquorum et amicorum suorum per visum ecclesie distribuantur salvis unicuique debitis que defunctus ei debebat.

28. Nullus constabularius vel alius ballivus noster capiat blada vel alia catalla alicujus nisi statim inde reddat denarios aut respectum inde habere possit de voluntate venditoris.

29. Nullus constabularius distringat aliquem militem ad dandum denarios pro custodia castri si facere voluerit custodiam illam in propria persona sua vel per alium probum hominem si ipse eam facere non possit propter rationabilem causam et si nos duxerimus vel miserimus eum in exercitum erit quietus

etus de custodia secundum quantitatem temporis quo per nos fuerit in exercitu.

30. Nullus vicecomes vel balivus noster vel aliquis alius capiat equos vel caretas alicujus liberi hominis pro cariagio faciendo nisi de voluntate ipsius liberi hominis.

31. Nec nos nec balivi nostri capiemus alienum boscum ad castra vel alia agenda nostra nisi per voluntatem ipsius cujus boscus ille fuerit.

32. Nos non tenebimus terras illorum qui convicti fuerint de felonis nisi per unum annum et unum diem et tunc redantur terre dominis feodorum.

33. Omnis kydelli de cetero deponentur penitus de Thamisiam et de Medewaye et per totam Angliam nisi per costeram maris.

34. Breve quod vocatur Precipe de cetero non fiat alicui de aliquo tenemento unde liber homo amittere possit curiam suam.

35. Una mensura vini sit per totum regnum nostrum et una mensura cervisie et una mensura bladi scilicet quarterium London et una latitudo pannorum tinctorum et russietorum et halbergettorum scilicet due ulne infera listas de ponderibus autem sit ut de mensuris.

36. Nichil detur vel capiatur de cetero pro brevi inquisitionis de vita vel membris set gratis concedatur et non negetur.

37. Si aliquis teneat de nobis per feodifirmam vel per sokagium vel per burgagium et ab alio terram teneat per servitium militare nos non habebimus custodiam heredis nec terre sue que est de feodo alterius occasione illius feodifirme vel sokagii vel burgagii nisi ipsa feodifirma debeat servitium militare Nos non habebimus custodiam heredis vel terre alicujus quam tenet ab alio per servitium militare occasione alicujus parve sergenterie quam tenet de nobis per servitium reddendi nobis cultellos vel sagittas vel hujusmodi.

38. Nullus ballivus ponat de cetero aliquem ad legem simplici loquela sua sine testibus fidelibus ad hoc inductis.

36. Nullus

39. Nullus liber homo capiatur vel imprisonetur aut disseisnatus aut utlagetur aut exuletur aut aliquo modo destruatur nec super eum ibimus nec super eum mittemus nisi per legale iudicium parium suorum vel per legem terre.

40. Nulli vendemus nulli negabimus aut differemus rectum aut iusticiam.

41. Omnes mercatores habeant saluum et securum exire de Angla et venire in Angliam et morari et ire per Angliam tam per terram quam per aquam ad emendum et vendendum sine omnibus malis tollis per antiquas et rectas consuetudines preterquam in tempore guerre et si sint de terra contra nos guerina et si tales inveniuntur in terra nostra in principio guerre attachientur sine dampno corporum et rerum donec sciatur a nobis vel capitali iusticiario nostro quomodo mercatores terre nostre tractentur qui tunc inveniuntur in terra contra nos gwerrina et si nostri salvi sint ibi alii salvi sint in terra nostra.

42. Liceat unicuique de cetero exire de regno nostro et redire salvo et secure per terram et per aquam salva fide nostra nisi tempore guerre per aliquod breve tempus propter communem utilitatem regni exceptis imprisonatis et ut agatis secundum legem regni et gente de terra contra nos gwerrina et mercatoribus de quibus fiat sicut predictum est.

43. Si quis tenuerit de aliqua escaeta sicut de honore Walingford Notingham Bon Lainkastr' vel de aliis escaetis que sunt in manu nostra et sunt baronie et obieret heres ejus non det aliud relevium nec faciat nobis aliud servitium quam baroni si baronia illa esset in manu baronis et nos eodem modo eam tenebimus quo baro eam tenuit.

44. Homines qui manent extra forestam non veniant de cetero coram iusticiariis nostris de foresta per communes summonitiones nisi sint in placito vel pleggii alicujus vel aliorum qui attachiati sint pro foresta.

45. Nos non faciemus iusticiarios constabularios vicecomites vel ballivos nisi de talibus qui sciant legem regni et eam bene velint observare.

46. Omnes barones qui fundaverunt abbatias unde habent cartas regum Anglie vel antiquam tenuram habeant earum custodiam cum vacaverint sicut habere debent.

47. Omnes

47. Omnes foreste que aforestate sunt tempore nostro statim deafforestentur et ita fiat de ripariis que per nos tempore nostro posite sunt in defenso.

48. Omnes male consuetudines de forestes et warrennis et de forestariis et warrennariis vicecomitibus et eorum ministris ripariis et earum custodibus statim inquirentur in quolibet comitatu per duodecim milites juratos de eodem comitatu qui debent eligi per probos homines ejusdem comitatus et infra quadriginta dies post inquisitionem factam penitus ita quod nunquam revocentur deleantur per eosdem ita quod nos hoc sciamus prius vel justiciarius noster si in Anglia non fuerimus.

49. Omnes obsides et cartas statim reddemus que liberate fuerunt nobis ab Anglicis in securitatem pacis vel fidelis servitii.

50. Nos amovebimus penitus de baliis parentes Gerardi de Athyes quod de cetero nullam habeant balliam in Anglia Engelardum de Cygony Galfridum de Martyni e fratres ejus Philippum Mark et fratres ejus et Galfridum nepotem ejus et totam sequelam eorundem.

51. Et statim post pacis reformationem amovebimus de regno omnes aliegenas milites balistarios servientes stipendarios qui venerint cum equis et armis ad nocumentum regni.

52. Si quis fuerit disseisitus vel elongatus per nos sine legali judicio parium suorum de terris castallis libertatibus vel jure suo statim ea ei restituemus et si contentio super hoc orta fuerit tunc inde fiat per judicium viginti quinque baronem de quibus sit mentio inferius in securitate pacis de omnibus autem illis de quibus aliquis disseisitus fuerit vel elongatus sine legale judicio parium suorum per Henricum regem patrem nostrum vel per Ricardum regem fratrem nostrum que in manu nostra habemus vel que alii tenent que nos oporteat warrantizare respectum habebimus usque ad communem terminum cruce signitorum exceptis illis de quibus placitum motum fuit vel inquisitio facta per preceptum nostrum ante susceptionem crucis nostre cum autem redierimus de peregrinatione nostra vel si forte remanserimus a peregrinatione nostra statim inde plenam justiciam exhibebimus.

53. Eundem

53. Eundem autem respectum habebimus et eodem modo de justitia exhibenda de forestis deafforestandis vel remansuris forestis quas Henricus pater noster vel Ricardus frater noster afforestaverunt et de custodiis terrarum que sunt de alieno feodo cujusmodi custodias hucusque habuimus occasione feodi quod aliquis de nobis tenuit per servitium militare et de abbatiis que fundate fuerint in feodo alterius quam nostro in quibus dominus feodi dixerit se jus habere et cum redierimus vel si remanserimus a peregrinatione nostra super hiis conquerentibus plenam justiciam statim exhibebimus.

54. Nullus capiatur nec imprisonetur propter appellum femine de morte alterius quam viri sui.

55. Omnes fines qui injuste et contra legem terre facte sunt nobiscum et omnia amerciamenta facta injuste et contra legem terre omnia condonentur vel fiat inde per judicium viginti quinque baronum de quibus sit mentio inferius in securitate pacis vel per judicium majoris partis eorumdem una cum predicto Stephano Cant' archiepiscopo si interesse poterit et aliis quos secum ad hoc vocare voluerit et si interesse non poterit nichilominus procedat negotium sine eo ita quod si aliquis vel aliqui de predictis viginti quinque baronibus fuerint in simili querela amoveantur quantum ad hoc judicium et alii loco illorum per residuos de eisdem viginti quinque tantum ad hoc faciendum electi et jurati substituantur.

56. Si nos disaifivimus vel elongavimus Walenses de terris vel libertatibus vel rebus aliis sine legali judicio parium suorum in Anglia vel in Wallia eis statim reddantur et si contentio super hoc orta fuerit tunc inde fiat in marchia per judicium parium suorum de tenementis Anglie secundum legem Anglie de tenementis Wallie secundum legem Wallie de tenementis marchie secundum legem marchie idem facient Walenses nobis et nostris.

57. De omnibus autem illis de quibus aliquis Walensium disaifitus fuerit vel elongatus sine legali judicio parium suorum per Henricum regem patrem nostrum vel Ricardum regem fratrem nostrum que nos in manu nostra habemus vel que alii tenent que nos oporteat warantizare respectum habebimus usque ad communem terminum cruce signatorum illis exceptis de quibus placitum motum fuit vel inquisitio facta per preceptum nostrum ante susceptionem crucis nostre cum autem redierimus vel si forte remanserimus a peregrinatione

natione nostra statim eis inde plenam justiciam exhibebimus secundum leges Walensium et partes predictas.

58. Nos reddemus filium Luwelini statim at omnes obsides de Wallia et cartas que nobis liberate fuerunt in securitatem pacis.

59. Nos faciemus Alexandro regi Scottorum de sororibus suis et obsidibus reddendis et libertatibus suis et jure suo secundum formam in qua faciemus aliis baronibus nostris Anglie nisi aliter esse debeat per cartas quas habemus de Willielmo patre ipsius quondam rege Scottorum et hoc erit per judicium parium suorum in curia nostra.

60. Omnes autem istas consuetudines predictas et libertates quas nos concessissimus in regno nostro tenendas quantum ad nos pertinet erga nostros omnes de regno nostro tam clerici quam laici observent quantum ad se pertinet erga suos.

61. Cum autem pro Deo et ad emendationem regni nostri et ad melius sopiendam discordiam inter nos et barones nostros ortam hec omnia predicta concesserimus volentes ea integra et firma stabilitate gaudere in perpetuum facimus et concedimus eis securitatem subscriptam videlicet quod barones eligant viginti quinque barones de regno quos voluerint qui debeant pro totis viribus suis observare tenere et facere observari pacem et libertates quas eis concessimus et hac presenti carta nostra confirmavimus ita scilicet quod si nos vel justiciarius noster vel balivi nostri vel aliquis de ministris nostris in aliquo erga aliquem deliquerimus vel aliquem articulorum pacis et securitatis transgressi fuerimus et delictum ostensum fuerit quatuor baronibus de predictis viginti quinque baronibus illi quatuor barones accedent ad nos vel ad justiciarium nostrum si fuerimus extra regnum proponentes nobis excessum petent ut excessum illum sine dilatione faciemus emendari et si nos excessum non emendaverimus vel si fuerimus extra regnum justiciarius noster non emendaverit infra tempus quadraginta dierum computandum a tempore quo monstratum fuerit nobis vel justiciario nostro si extra regnum fuerimus predicti quatuor barones referent causam illam ad residuos de viginti quinque baronibus et illi viginti quinque barones cum communa totius terre distringent et gravabunt nos modis omnibus quibus poterunt scilicet per captionem castrorum terrarum possessionum et aliis modis quibus poterunt donec fuerit emendatum secundum arbitrium eorum salva persona

persona nostra et regine nostre et liberorum nostrorum et cum fuerit emendatum intendent nobis sicut prius fecerunt Et quicumque voluerit de terra jurat quod ad predicta omnia exequenda parebit mandatis predictorum viginti quinque baronum et quod gravabit nos posse suo cum ipsis et nos publice et libere damus licentiam jurandi cuilibet qui jurare voluerit et nulli unquam jurare prohibebimus Omnes autem illos de terra qui per se et sponte sua noluerint jurare viginti quinque baronibus de distringendo et gravando nos cum eis faciemus jurare eisdem de mandato nostro sicut predictum est Et si aliquis de viginti quinque baronibus decesserit vel a terra recefferit vel aliquo alio modo impeditus fuerit quominus ista predicta possent exequi qui residui fuerint de predictis viginti quinque baronibus eligant alium loco ipsius pro arbitrio suo qui simili modo erit juratus quo et ceteri In omnibus autem que istis viginti quinque baronibus comittuntur exequenda si forte ipsi viginti quinque presentes fuerint et inter se super re aliqua discordaverint vel aliqui ex eis summoneti nolint vel nequeant interesse ratum habeatur et firmum quod major pars eorum qui presentes fuerint providerit vel preceperit ac si omnes viginti quinque in hoc consensissent et predicti viginti quinque jurent quod omnia ante dicta fideliter observabunt et pro toto posse suo facient observari Et nos nichil impetrabimus ab aliquo per nos nec per alium per quod aliqua istarum concessionem et libertatem revocatur vel minuatur et si aliquid tale impetratum fuerit irritum sit et inane et numquam eo utemur per nos nec per alium.

62. Et omnes malas voluntates indignationes et rancoras ortos inter nos et homines nostros clericos et laicos a tempore discordie plene omnibus remisimus et condonavimus Preterea omnes transgressionem factas occasione ejusdem discordie a pascha anno regni nostri sextodecimo usque ad pacem reformatam plene remisimus omnibus clericis et laicis et quantum ad nos pertinet plene condonavimus Et insuper fecimus eis fieri litteras testimoniales patentes domini Stephani Cant' archiepiscopi domini Henrici Dublin' archiepiscopi et episcoporum predictorum et majistri Pandulfi super securitate ista et concessionibus prefatis.

63. Quare volumus et firmitur precipimus quod Anglicana ecclesia libera sit et quod homines in regno nostro habeant et teneant omnes prefatas libertates jura et concessionem bene et in pace libere et quiete plene et integre sibi et heredibus suis de nobis et heredibus nostris in omnibus rebus

et locis in perpetuum sicut predictum est Juratum est autem tam ex parte nostra quam ex parte baronum quod hec omnia supradicta bona fide et sine malo ingenio observabuntur Testibus supradictis et multis aliis Data per manum nostram in prato quod vocatur Runingmed inter Windelforum et Stanes quinto decimo die Junii anno regni nostri septimo decimo.

Terminus Pasche Anno Regni Regis EDWARDI

Filii Regis EDWARDI Primo.

SYMON de Paris porta breve de transvers vers H. bailiff Sire Robert Tonny & plusieurs autres, & se plaint, que W. & H. certain jour luy pristrent & emprisonnerent &c. a tort & encountre la pees &c. PASS. respond pur toutz, forspris le bailiff, que riens nount fait encountre la pees, & pour le bailiff, yl avowea le restrainement par la resoun que lavandit S. si est villeine lavandit R. q̄i bailiff yl est, & fust trove a N. en soun manoire, le quel vint & lui tendist office de Provoist & il la refusa & ne se voilleit. Justice, &c. TOND. rehercea le avowery, & dit que a cele avowery ne doit yl estre reseve, pur ceo que S. est fraunc citizene de Londre & ad este tous ceux diz anz, & ad este Vicounte le Roy en mesme la citee, & rendoit accounts al Eschequer, & ceo voloins averrer per Record, & uncore huy ceo jour est Alderman & de la ville de Londre, & demande jugement, sils puissent villenage en sa persone allegger. HERLE. A ceo qil dient qil est citizene de Londre nous navoinse faire, mes nous vous dioins, qil est villein R. de Eve & de Treve, & ses auncestres Ael & Befayel, & toux ces auncestres ses terres tennantz deinx le manoire de N. & ces auncestres seistz des villeins services de auncestres S. come a faire rechat de Char & de Sank & de fille marier, & de euz tailler haut & bas, &c. & uncore est feisi de ces freres de mesme le piere & de mesme la mere & demande jugement si four luy, come four soun villein en soun manoire trove, ne puisse avowere faire. TOND. Fraunc homme & de fraunc estat, & eux nient feisi de luy, come de lour villein, prest, &c. BER. Jeo ai oi dire que un homme fust prist en la bordel, & fust prist & pendu, & sil eust demorre a lostiel, il neust en nul mal &c. auxint de ceste parte, sil eust este fraunc citizene pur que neust il demorre en sa citee? *Ad alium diem.* TOND. se tient qil ne fust feisi de lui com de soun villein ne de ses villeins services. &c. PASS. La ouil dit, que nous de sumes pas seist de lui come de nostre villein, il nasquit en nostre villein, ou commence noster seisine, et nous lui trovames en soun manoire, et la nostre seisine continue. Jugement. BER. Vous ple-

dietz four la seifine, & il pleident four le droit, issint naverrez james bone issue de plee. HERLE. Seifi en la fourme qe vous avoins dit. BER. La cour ne restreindra tiel travers sanz ceo qe vous dietz que vous estez seifitz de lui come de vostre villein & de ses villeinz services. *Et sic fecit. Et alii e contra.*

SYMON de Paris brought a writ of traverse against H. the bailiff of Sir Robert Tonny and several others, and complained that W. and H. on a certain day seized and imprisoned him, &c. wrongfully and against the peace, &c.

PASSILEGH answered for all, except the bailiff, that they had done nothing against the peace, and as for the bailiff he justified the restraintment for reason that the aforesaid Symon is villain of the aforesaid Sir Robert, whose bailiff he is, and was found at N. in his manor; the which (Sir Robert) came and tendered to him the office of Provost, which he refused and would not. Justice &c.

TOND Rehearsed the justification, and said that it ought not be received, because that Symon is a free citizen of London, and has been all these ten years; and has been King's sheriff in that city, and has given up accounts to the Exchequer, and this we are willing to prove by record; and that he is besides at this very time Alderman of the city of London, and demand judgment if villainage can be alledged in his person.

HERLE. As to what he says about his being a free citizen of London it is what we have nothing at all to do with; but we tell you that he is the villain of Sir Robert, of grandfather and great great grandfather, and all his ancestors holding their lands in the manor of N. and these ancestors seized of the villain services of the ancestors of Symon, so as to take redemption for their flesh and blood, and for leave to marry their daughters, and to impose talliages upon them high and low; and that he is still seized of his brothers and likewise of his father and mother, and demands judgment, if upon him as upon his villain found in his manor, he may not justify *the restraint*.

TOND. A free man and of free estate, and they not seized of him as of their villain.

BEREFORD. I have heard tell how a man was found in a brothel and was taken and hanged. If he had remained in his lodging he would have suffered no harm, &c. In like manner,

ner, with regard to this man, if he was a free citizen of London, why did he not remain in his city?

Ad alium diem, TOND. I hold that he (Sir Robert) was not seized of him nor of his villain services.

PASSELEGH. That is to say that we are not seized of him as of our villain. He was born as our villain; there commenced our seifine, and we found him in our manor, and there our seifine continued. Judgment.

BEREORD. You plead upon the seifine and they plead upon the right, in this manner you will never have good issue of plea.

HERLE. Seifed in the form that we have related.

BEREFORD. The court will not restrain such travers, unless you will say that you are seifed of him as of your villain and of his villain services. *Et sic fecit. Et alii e contra.*

PASSELEGH] Edmund Passeiegh, serjeant at law, afterwards one of the Barons of the Exchequer.

TOND.] The rest of this learned counsellor's name is not to be found in Dugdale's *Origines Juridicales*, where the other names are preserved.

HERLE.] William de Herle, serjeant at law, afterwards Chief Justice of the King's Bench.

BEREFORD] William de Bereford, Chief Justice of the King's Bench.

FINIS.